

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

22

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1910

No. 2206.

765

DANIEL H. NICHOLS, FRANK O. NICHOLS, AND WILLIAM
A. JOLINE, APPELLANTS,

vs.

J. IRVING BEALMEAR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 13, 1910.

LIBRARY

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1910.

No. 2206.

DANIEL H. NICHOLS, FRANK O. NICHOLS, AND WILLIAM
A. JOLINE, APPELLANTS,

vs.

J. IRVING BEALMEAR, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

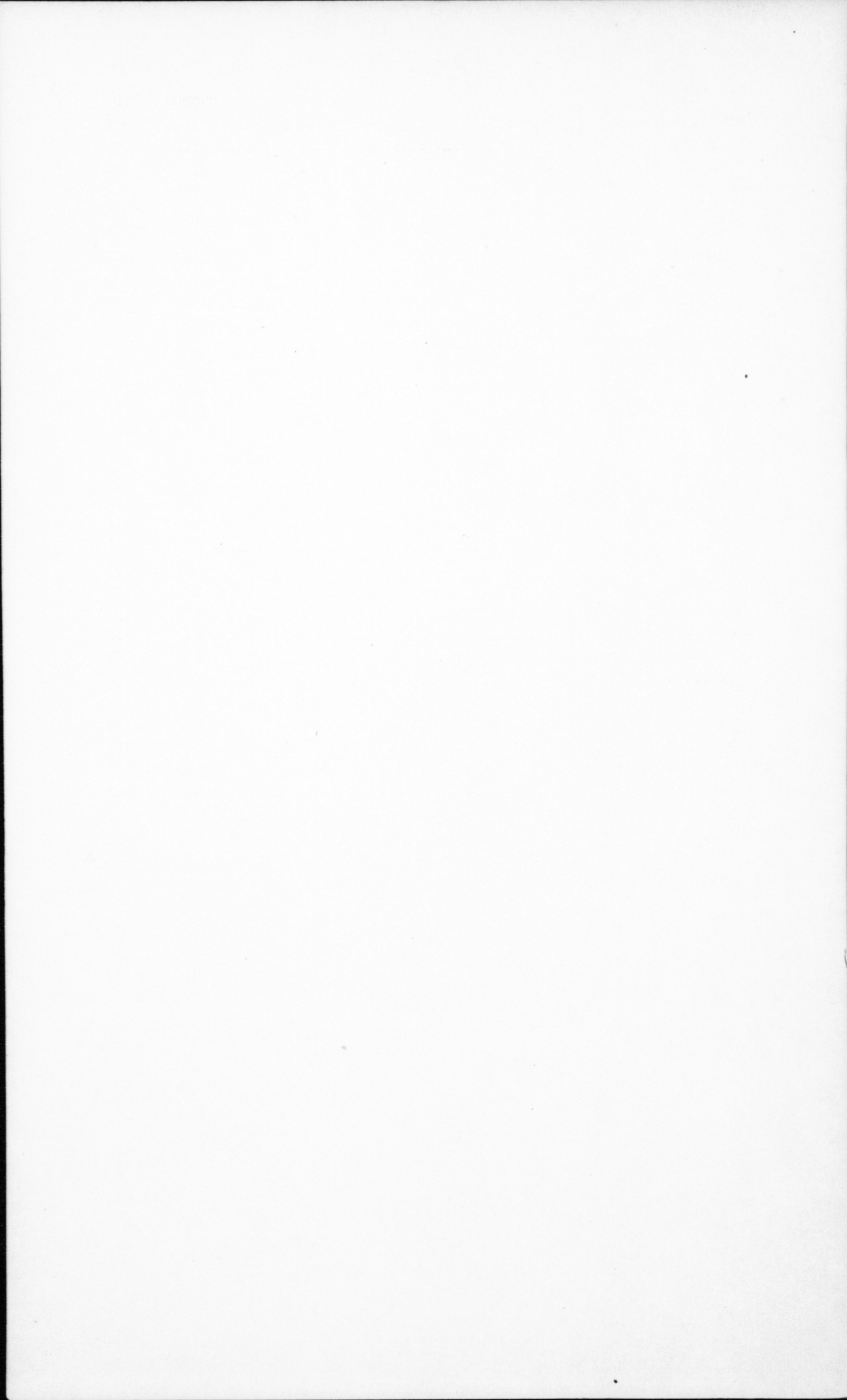
	Original.	Print
Caption	<i>a</i>	1
Bill	1	1
Demurrer of Daniel H. Nichols.....	12	7
Demurrer of Frank O. Nichols and William A. Joline.....	13	7
Order overruling demurrers.....	15	8
Answer of Daniel H. Nichols.....	16	9
Answer of Frank O. Nichols.....	20	11
Answer of William A. Joline.....	22	12
Joinder of issue.....	24	13
Testimony on behalf of complainant.....	25	14
Testimony of J. Irving Bealmear.....	25	14
Direct examination.....	25	14
Cross-examination	27	15
Redirect examination.....	32	17
Recross-examination	33	18
Redirect examination.....	35	19
Testimony of James A. Bealmear.....	36	19
Direct examination.....	36	19
Cross-examination.....	50	26
Testimony of Lucy V. Sterrett.....	68	34
Direct examination.....	68	34
Cross-examination	71	36
Redirect examination.....	79	40

	Original.	Print
Testimony of James A. Bealmear (recalled) ..	82	41
Cross-examination	82	41
Redirect examination	83	42
Recross-examination	88	44
Redirect examination	92	47
Testimony of William H. Sholes	94	47
Direct examination	94	47
Cross-examination	95	48
Redirect examination	97	49
Stipulation	111	56
Testimony of William H. Germann	113	57
Direct examination	113	57
Cross-examination	115	58
Testimony of Daniel B. Nichols	120	61
Direct examination	120	61
Letter from R. E. L. Smith to Daniel H. Nichols	122	62
Testimony of William W. Millan	123	62
Direct examination	123	62
Cross-examination	124	62
Testimony of James A. Bealmear (recalled)	127	65
Cross-examination	127	65
Testimony of Aaron R. Townshend	128	65
Direct examination	128	65
Cross-examination	129	65
Complainant's Exhibit No. 1—Agreement	133	67
No. 2—Deed	138	69
No. 3—Deed	141	71
No. 4a—Note	148	73
No. 4b—Note	148	73
No. 4c—Note	149	74
No. 4d—Note	149	75
No. 4e—Note	150	75
No. 4f—Note	150	75
No. 4g—Note	151	76
No. 4h—Note	151	76
No. 4i—Note	152	76
No. 4j—Note	152	77
No. 5—Lease	153	77
No. 6—Deed	155	78
No. 7—Short copy	158	79
No. 8—Short copy	159	80
Testimony on behalf of defendants	160	80
Testimony of Leonard C. Wood	160	81
Direct examination	160	81
Cross-examination	163	82
Redirect examination	175	88
Testimony of James A. Ettinge	176	88
Direct examination	176	88
Cross-examination	179	90
Testimony of Charles A. Wright	192	96
Direct examination	192	96
Cross-examination	194	97

INDEX.

III

	Original.	Print
Testimony of August F. Pohlig.....	203	102
Direct examination.....	203	102
Cross-examination	206	103
Testimony of Daniel H. Nichols	215	107
Direct examination.....	215	107
Cross-examination	220	110
Redirect examination	244	122
Recross-examination	247	124
Defendants' Exhibit No. 1—Docket entries.....	253	126
No. 2—Docket entries	255	127
No. 3—Docket entries.....	257	128
No. 4—Short copy.....	258	129
No. 5—Short copy.....	259	129
Testimony in rebuttal.....	260	130
Testimony of Lucy V. Sterrett.....	260	130
Direct examination	260	130
Cross-examination	262	131
Testimony of William H. Sholes.....	267	133
Direct examination.....	267	133
Cross-examination.....	270	135
Redirect examination	271	135
Recross-examination	271	136
Testimony of James A. Bealmear	272	136
Direct examination.....	272	136
Cross-examination	277	138
Decree.....	281	140
Appeal by Daniel H. Nichols, Frank O. Nichols, and William A. Joline.....	284	142
Memorandum : Appeal bond filed.....	285	142
Directions to clerk for preparation of transcript of record.....	285	142
Clerk's certificate.....	286	143



In the Court of Appeals of the District of Columbia.

No. 2206.

DANIEL H. NICHOLS et al., Appellants,
vs.
J. IRVING BEALMEAR.

a Supreme Court of the District of Columbia.

Equity. No. 28477.

J. IRVING BEALMEAR, Complainant,
vs.
DANIEL H. NICHOLS, FRANK O. NICHOLS, and WILLIAM A. JOLINE,
Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed Apr. 14, 1909.

In the Supreme Court of the District of Columbia, Sitting as a
Court of Equity.

Equity. No. 28477.

J. IRVING BEALMEAR, Complainant,
vs.
DANIEL H. NICHOLS, FRANK O. NICHOLS, and WILLIAM A. JOLINE,
Defendants.

Complainant respectfully shows to the Court:

1. He is a citizen of the United States and resides in the City of Baltimore, in the State of Maryland, and sues in his own right.
2. The defendants are citizens of the United States. The de-

endants Daniel H. Nichols and Frank O. Nichols are residents of the District of Columbia; the defendant William A. Joline is a resident of the City of Philadelphia, in the State of Pennsylvania. All of the defendants are sued in their own right.

3. On the second day of March, 1909, and ever since, complainant was and is the owner of, and in possession of certain real estate situated in the City of Washington, District of Columbia, known and described as lots numbered eighteen to twenty-seven, both inclusive, in J. Irving Bealmear's sub-division of Square North of Square 1053, of the City of Washington, District of Columbia, improved by houses known and numbered as Nos. 519, 521, 523, 525, 527, 529, 531, 533, 535 and 537 Tennessee Avenue, Washington, D. C. Said property was and is subject to a certain deed of trust to secure the payment of the sum of twenty-two thousand dollars and interest, as will more fully appear by reference to Liber 2902 folio 215 et seq., land records of the District of Columbia where said trust is recorded; that on the said second day of March, 1909, and ever since, as plaintiff is informed and therefore avers, the defendant Daniel H. Nichols was and is the owner of certain real estate in the said city and district, known and described as

Part of Original Lot 5 in Square 491, beginning for the same on Pennsylvania Avenue at a point distant 28 feet, $\frac{1}{4}$ of an inch Northwesterly from the Southeast corner of said lot and running thence Northwesterly on said Avenue 27 feet $2\frac{3}{4}$ inches to the Southwest corner of said lot, thence Northeasterly on the dividing line between said lot 5 and Original lot 6 in said square 132 feet $4\frac{1}{4}$ inches to an alley in the rear of said lot 5, thence Southeasterly on said rear line to a point that would be intersected by a line drawn at right angles to said Avenue from the point of beginning, and thence Southwesterly from said point, in a straight line to the place of beginning,

improved by house numbered 487 Pennsylvania Avenue, Northwest, Washington, D. C., which said property was and is subject to two deeds of trust to secure the payment respectively of fifteen thousand dollars with interest at the rate of five per cent per annum due March 6, 1912, and of twenty-five hundred dollars with interest at the rate of five per cent per annum, due March 6, 1909, recorded in Liber 3065 at folio 75 et seq. and folio 78 et seq. respectively of the Land Records of the District of Columbia.

4. That on the second day of March, 1909, complainant and defendant Daniel H. Nichols entered into an agreement to exchange their respective properties herein described, which said agreement was committed to writing and signed by the complainant and said defendant and sealed with their respective seals; said agreement was duly acknowledged by complainant as his act and deed and duly recorded among the land records of the District of Columbia on the eighteenth day of March, 1909, in Liber 3196, folio 421 et seq. A copy of said agreement is filed herewith and prayed to be read and considered as a part of this bill, and is marked "Com-

plainant's Exhibit No. 1." By the agreement aforesaid the defendant Daniel H. Nichols agreed to sell and convey by a good and marketable title to the complainant all that lot and improvements in the City of Washington, District of Columbia, designated as No. 487 Pennsylvania Avenue, fronting on said Avenue 27.7 feet with even depth of 140 feet, known as the Mount Vernon Hotel, the said described property being subject to the two deeds of trust aforesaid. Plaintiff alleges and will duly show that lot and improvements in the said agreement designated as No. 487 Pennsylvania Avenue, Northwest Washington, D. C., and known as the "Mount Vernon Hotel" are the same lot and improvements as last described in the third paragraph of this bill, said agreement calling for a slightly greater depth for the lot than that given in said description.

4 It was further agreed between the complainant and defendant Daniel H. Nichols that the complainant would, in consideration of the conveyance to him of the real estate last described, which conveyance and the other things hereinafter set out were in consideration of the conveyance next referred to, they being cross conveyances, convey unto the defendant Daniel H. Nichols, the ten certain dwelling houses heretofore referred to, which said real estate was subject to the deed of trust heretofore referred to, and which the defendant Daniel H. Nichols agreed to assume. Plaintiff further alleges and will duly prove that the ten dwelling houses, to wit Nos. 519, 521, 523, 525, 527, 529, 531, 533, 535 and 537, are the same as the lots and improvements first described in the third paragraph of this bill.

It was further agreed by and between the complainant and defendant Daniel H. Nichols that in consideration of a cash difference of five hundred dollars due to complainant by defendant Daniel H. Nichols, as a bonus or "boot" between the values of the properties agreed to be exchanged, the defendant Daniel H. Nichols would execute and deliver to complainant his ten promissory notes for the sum of fifty dollars each and interest at six per cent per annum, said notes payable respectively in one, two, three, four, five, six, seven, eight, nine and ten months after date, and to secure the payment of said notes defendant Daniel H. Nichols
5 agreed to execute and deliver to complainant a second deed of trust on the aforesaid ten houses, all of which above was to be done within a reasonable time. It was further agreed between complainant and defendant Daniel H. Nichols that all taxes, water rents, interest on trusts should be paid or adjusted by each of said owners on their respective properties to April 1, 1909, and that said properties should be conveyed in accordance with their agreement of exchange by deeds conveying good and marketable titles clear of all liens, excepting the deeds of trust hereinbefore specified.

It was further agreed that the complainant should lease to the defendant Daniel H. Nichols the property known as No. 487 Pennsylvania Avenue, to be acquired by him under the agreement aforesaid, for the term of two years, dating from the first day of April, 1909, at and for a yearly rental of twenty-five hundred Dollars, the

said rent to be paid in equal monthly installments of two hundred and eight and 33/100 dollars on the first day of each and every month, dating from April 1, 1909, and that the lease should specify that should the lessor desire possession of said premises mentioned in said lease at any time during the term of same he might obtain same at the expiration of sixty days notice served on said lessee in writing and by paying for such surrender the sum of one thousand dollars in cash, provided that the said monthly rental were promptly paid and the premises had not already been vacated by the lessee; it was further agreed that the defendant Daniel H. Nichols, the lessee under the proposed lease, might by giving sixty days' notice in writing to the complainant, the lessor, vacate the said premises at the end of sixty days and surrender them to the owner of the same, but without any compensation to him for so vacating, and provided the rent should be paid up to the time of such surrender.

It was further provided that defendant Daniel H. Nichols would assume and pay the costs of holding the said second trust on premises No. 487 Pennsylvania Avenue until title to the same could be examined, provided the said trust did not extend beyond April 1, 1909.

4½. Complainant further charges, upon information and belief, that the defendant Daniel H. Nichols, some days prior to the first day of April, 1909, determined wrongfully and without any legal or equitable reason or excuse therefor, that he would not fulfill and perform his said contract, but would refuse to convey to complainant the property so, as aforesaid, agreed by him to be conveyed, and thereupon set about devising means to obstruct, delay and hinder complainant in demanding and securing a performance and fulfillment thereof, as hereinafter more fully appears.

5. Complainant further avers that on to wit the 29th day of March, 1909, there were filed in the Supreme Court of the District of Columbia, two suits at law against the defendant Daniel H. Nichols for the sum of sixteen hundred and seventy-five dollars (\$1675), and five hundred and eighty-four and 16/100 dollars, (\$584.16)

respectively by Frank O. Nichols, who resides at No. 487 Pennsylvania Avenue, Northwest, Washington, D. C., and William A. Joline, who resides in the city of Philadelphia, both of whom are named as defendants in this bill. Frank O. Nichols is the sole plaintiff in the first named suit and William A. Joline is the sole plaintiff in the second named suit; that on the 30th day of March, 1909, Defendant Daniel H. Nichols confessed judgment in both said suits and judgment was duly entered in each case for the sum sued for, with interest and costs. Said suits are numbered respectively 51,517 and 51,518 on the Law Docket of this Court and the said judgments have not been superseded or set aside but remain in full force and effect and, so far as complainant is informed, have not been assigned by the judgment creditors. Plaintiff further charges, and expects to prove, that defendants Frank O. Nichols and William A. Joline had knowledge of the aforesaid agreement between complainant and Daniel H. Nichols, and that the extraordi-

nary haste in securing judgments and the unusual event of confession of same, were in pursuance of an attempt by the said judgment creditors and defendant Daniel H. Nichols, to hinder and embarrass complainant in his right to enforce compliance with the terms of the said contract. Complainant is informed, and so avers, that as a matter of law said judgments are not liens upon the said described real estate so by him agreed to be acquired from the Defendant Daniel H. Nichols, but he avers that under the circumstances they constitute clouds upon his title to the same, unless decreed by this court to

8 be void as against his title to said real estate; or that, should he be mistaken as to the legality of said judgments, as against his said title, they constitute a just cause why this court in decreeing specific performance of the said contract should order and direct the defendant Daniel H. Nichols to compensate complainant for the wrong thus suffered by him the complainant by the said defendant Daniel H. Nichols having thus rendered himself unable to fully perform his said contract and deliver the said property free from all liens except the deeds of trust aforesaid.

6. On to wit the first day of April, 1909, and on divers other and subsequent dates, complainant has demanded of defendant Daniel H. Nichols that he comply with the terms of his aforesaid agreement and complainant then tendered himself and now tenders himself ready, willing and able to comply with all the said terms on his part to be performed; but notwithstanding said demand and tender and notwithstanding complainant prepared at his own cost all deeds, lease and notes needful to consummate the said agreement and tendered the same to the defendant Daniel H. Nichols for execution by him of such as required to be so executed; and notwithstanding plaintiff offered to said defendant, duly executed, all papers to be so executed by him the complainant to consummate said agreement, and stated to the said defendant or to his attorney acting for him that he would remedy any defect, if such there were in any of said papers, provided the said defendant would indicate it, if the amendment desired were within the purview of the agreement aforesaid,

9 yet the defendant Daniel H. Nichols did specifically and finally decline and refuse to comply with his said agreement without assigning any cause for so refusing and declining, and the said defendant Daniel H. Nichols does now decline and refuse to comply with the terms of his said agreement and does decline and refuse to convey the said described property, so by him agreed to be conveyed to complainant.

Complainant further alleges that in the preparation of the papers aforesaid and in the examination of the title to the said described lot contracted to be conveyed to him, and in the employment of counsel to file this bill and assert his rights in the premises, and in other directions in and about the matter, complainant has been compelled to pay large sums of money, all by reason of the wrongful refusal of defendant Daniel H. Nichols to keep to and perform his contract as aforesaid.

7. Complainant further says that the exchange of properties provided for in said agreement was upon a basis which was fair as to

values; that there was no concealment or misrepresentation of any material thing in connection with said exchange on complainant's part and that to require defendant Daniel H. Nichols to specifically comply with the terms of his said agreement would not, complainant believes and therefore avers, work any undue hardship upon him.

Being without remedy at law, complainant prays:

I.

10 That process issue and if necessary publication be made against the persons named as defendants in the caption of this bill, requiring them to appear and answer the exigencies thereof, but answer under oath is expressly waived.

II.

That defendant Daniel H. Nichols be decreed to specifically perform his aforesaid agreement, upon such terms and under such conditions as to the Court may seem right.

III.

That the judgment liens aforesaid of Frank O. Nichols and William A. Joline be decreed null and void as against the title of complainant to the property described in the bill, to wit, Lot — improved by house No. 487 Pennsylvania Avenue, Northwest, Washington, D. C.; or that defendant Daniel H. Nichols compensate complainant for such damage as he may suffer by reasons of the judgments aforesaid being entered as aforesaid against the said defendant Daniel H. Nichols after his agreement to convey said property and prior to his doing so.

IV.

That complainant may have a decree against the defendants and each or either of them, as to the Court may seem right, for the expense to which he has been put by reason of the failure and refusal of the defendant Daniel H. Nichols to comply with his said contract and by reason of defendants Frank O. Nichols and William A. Joline conspiring with said defendant Daniel H. Nichols to hinder, delay and prevent complainant from securing a prompt, expeditious and inexpensive compliance by defendant Daniel H. Nichols.

V.

11 That complainant may have such other and further relief as the equities of the case may require.

The defendants to this bill are Daniel H. Nichols, Frank O. Nichols and William A. Joline.

J. IRVING BEALMEAR,
Complainant.

MILLAN & SMITH,
Sol'r for Complainant.

CITY OF BALTIMORE,
State of Maryland, ss:

J. Irving Bealmear being first duly sworn upon his oath says that he has read the above bill of complainant by him subscribed and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true; those stated as upon information and belief he believes to be true.

J. IRVING BEALMEAR.

Subscribed and sworn to before me this 14th day of April, 1909.

J. ALEX HILLEARY, JR.,
Notary Public.

[SEAL.]

12

Demurrer of Daniel H. Nichols.

Filed May 28, 1909.

* * * * *

Now comes the defendant, Daniel H. Nichols, by protestation and not confessing the matters and things in said bill alleged or any of them to be true demurs to said bill and among the causes thereof says:

First. That complainant has not, in or by his said bill, stated such a case as entitles him to any relief in equity against this defendant.

Second. That complainant's bill does not show, by the facts alleged, that he has not a plain, adequate and complete remedy at law for damages against this defendant.

Third. That the bill contains no allegation of this defendant's insolvency.

Fourth. That the allegations of the bill show that the specific enforcement of the alleged contract is impracticable.

Fifth. That the complainant does not show, by facts alleged, that specific performance of the alleged contract is necessary to him.

WILSON & BARKSDALE,
Solicitors for Defendant Daniel H. Nichols.

I hereby certify that I am of counsel in the above entitled cause for Daniel H. Nichols and in my opinion foregoing demurrer is well founded in law.

NOEL W. BARKSDALE,
Solicitor for Daniel H. Nichols.

13

Now comes Daniel H. Nichols, who says on oath that he is one of the defendants in the above entitled cause and that the foregoing demurrer is not interposed for delay.

DANIEL H. NICHOLS.

Subscribed and sworn to before me this 28th day of May, 1909.

JOSEPH R. FAGUE,
Notary Public, D. C.

[SEAL.]

Demurrer of Frank O. Nichols and William A. Joline.

Filed Jul- 22, 1909.

* * * * *

Now come the defendants Frank O. Nichols and William A. Joline, by protestation and not confessing the matters and things in said bill alleged or any of them to be true, demur to said bill and among the causes thereof say:

First. That complainant has not, in or by his said bill, stated such a case as entitles him to any relief in equity against these defendants.

Second. That the allegations of the bill show that the specific enforcement of the alleged contract is impracticable.

14 Third. That the judgments at law set out in the complainant's bill constitute liens upon the equitable estate of the defendant Daniel H. Nichols in the property alleged in the bill to belong to said Daniel H. Nichols, which liens continue from the date of their rendition as long as such judgments shall be in force, or until the same shall be satisfied or discharged, and the said judgment creditors can not be deprived of their rights of lien by the specific performance of the alleged contract between the complainant and Daniel H. Nichols.

WILSON & BARKSDALE,
*Solicitors for Defendants Frank
O. Nichols and Wm. A. Joline.*

I hereby certify that I am of counsel in the above entitled cause for Frank O. Nichols and William A. Joline and in my opinion the foregoing demurrer is well founded in law.

NOEL W. BARKSDALE,
*Solicitor for Frank O. Nichols
and William A. Joline.*

Now comes Frank O. Nichols, who says on oath that he is one of the defendants in the above entitled cause and that the foregoing demurrer is not interposed for delay.

FRANK O. NICHOLS.

Subscribed and sworn to before me this 15th day of July, 1909.

JOSEPH R. FAGUE,
Notary Public, D. C.

[SEAL.]

15 Now comes William A. Joline, who says on oath that he is one of the defendants in the above entitled cause and that the foregoing demurrer is not interposed for delay.

WILLIAM A. JOLINE.

Subscribed and sworn to before me this 20th day of July, 1909.

LEO. G. BERNHEIMER,
Notary Public.

[SEAL.]

Commission expires Feb'y 27, 1913.

Order Overruling Demurrers.

Filed Oct. 22, 1909.

* * * * *

Upon consideration of the demurrer herein, after argument by counsel, it is this 22nd day of October *ordered* that the demurrers be and it is hereby overruled, and the defendants are allowed twenty days within which to answer the bill.

THOS. H. ANDERSON, *Justice*.

16

Answer of Daniel H. Nichols.

Filed Nov. 11, 1909.

* * * * *

Now comes Daniel H. Nichols and, for answer to the bill of complaint filed in the above entitled cause, says:

1. That the residence and citizenship of complainant are admitted.

2. That the residence and citizenship of the defendants are likewise admitted.

3. That the allegations of paragraph three are admitted as alleged.

4. That the defendant denies that he entered into a contract with J. Irving Bealmear on March 2, 1909, or on any other day and he therefore denies the allegations of paragraph four as to the provisions of such contract, or the recording of same and all other allegations of said paragraph.

4½. That defendant denies the allegations of paragraph four and one half that he determined wrongfully and without any legal or equitable reason or excuse not to fulfill and perform the alleged contract as no contract was ever in existence between him and plaintiff, and as there was no such contract defendant did not set about devising means to obstruct, delay, and hinder plaintiff in securing performance of the same.

5. That defendant admits that two judgments for \$1675 and \$584.16 were filed against him in favor of the parties as alleged, but that defendant denies that Frank O. Nichols and William A. Jolin had knowledge of the alleged agreement between defendant and complainant for the reason that there never was any such agreement. It is denied that the confession of judgment on the part of this defendant was an attempt by him to hinder and embarrass plaintiff in his alleged right to enforce compliance with the terms of the alleged contract for the reason as defendant avers, that no such contract was ever in existence. Defendant says that whether said judgments are liens upon the real property described in bill are questions of law and this defendant is not called upon to affirm or deny the same. But defendant denies that said

judgments are clouds upon complainant's title to said property, because he has no title thereto. Answering further defendant says said judgments constitute no cause why this court in decreeing specific performance should compensate plaintiff for the alleged wrong suffered by him for the reason that no wrong has been sustained by any misconduct on the part of defendant toward the plaintiff.

6. That it is admitted that plaintiff has demanded of defendant that he comply with an alleged agreement, and has tendered to him certain deeds, leases and notes to consummate a deed, but defendant says that such tender was not made until the 7th day of April, 1909. It is true as alleged that this defendant did specifically and finally decline to sign the papers offered for signature, but he never refused
18 to comply with his agreement for the reason that he never entered into one with plaintiff. As to the other allegations of said paragraph this defendant has no information and can neither admit nor deny the same.

7. That defendant denies the allegations of paragraph seven in full and avers once again that there was never any contract or agreement between plaintiff and defendant.

8. That this defendant answering further says that a contract or agreement for exchange of certain properties was entered into by and between this defendant and a certain person, not the plaintiff, who held himself out to be owner of the property to be taken over by this defendant, and it was not until sometime after said contract had been executed that this defendant was informed that said person was one James A. Bealmear and that the latter did not hold the title to the aforesaid property, and this defendant has no knowledge or notice that said contract and the alleged rights thereunder have been assigned or conveyed to plaintiff. That this defendant has not seen the contract that plaintiff is seeking to enforce and does not know whether it is the same he executed with the aforesaid certain person or not, but the defendant alleges that the copy of an alleged contract offered in evidence is not a copy of the contract executed between defendant and the aforesaid certain person.

9. That in entering into the said contract with the said James A. Bealmear, it was distinctly stated by the said James A. Bealmear to this defendant, and one of the inducements by which the
19 defendant signed said agreement was, that said Bealmear would guarantee that the monthly payments to be made to The Perpetual Building and Loan Association on the property to be taken by the defendant under the contract not to exceed \$110 per month for a period of five years and that the Perpetual Building and Loan Association, which held the incumbrance, could not and would not increase the same, whereas the fact is that said Association can at any time at will increase said monthly payments without the consent of this defendant. That this representation and statement of said James A. Bealmear in this particular were false and he knew, when he made them, that they were false and he so represented them in order to induce this defendant to enter the said contract with him. That this defendant relied upon the state-

ment of said James A. Bealmear as to the fixed amount of said payments and was induced to enter into the aforesaid contract by reason of it and but for his assurance and guarantee in that particular this defendant would not have signed the aforesaid agreement for the reason that defendant was not financially able to pay a greater sum than \$110 per month and the requirement of any greater payment would seriously embarrass defendant financially and be beyond his financial ability to meet and had defendant been advised of the facts with reference to this feature of the transactions, he never would have entered into said agreement.

And now having fully answered, defendant prays to be hence dismissed with his costs.

DANIEL H. NICHOLS,
Defendant.

WILSON & BARKSDALE,
Attorneys for Defendant.

20 Daniel H. Nichols on oath says he has read the foregoing answer by him subscribed and knows the contents thereof; that the statements therein made of his personal knowledge are true and those made upon information and belief he believes to be true.

DANIEL H. NICHOLS.

Subscribed and sworn to before me this 11th day of November, 1909.

[SEAL.]

JOSEPH R. FAGUE,
Notary Public, D. C.

Answer of Frank O. Nichols.

Filed Nov. 11, 1909.

* * * * *

Now comes Frank O. Nichols and for answer to complainant's bill filed in this cause or to so much thereof as he is advised it is material for him to answer, answering says:

1, 2, and 3. That the allegations of paragraphs one, two and three are admitted as alleged.

4. That this defendant has no knowledge of the facts set out in paragraph four of the said bill and therefore neither admits nor denies the same and calls upon the plaintiff for strict proof
21 of the same so far as they may be material to defendant's rights.

4½. That this defendant is not informed and therefore neither admits nor denies that Daniel H. Nichols wrongfully and without reason or otherwise determined that he would refuse to convey the said property to complainant nor whether or not he set about to devise means to obstruct, delay and hinder plaintiff as alleged. Strict proof is called for if material.

5. That it is admitted that this defendant secured a judgment in the Supreme Court of the District of Columbia against Daniel H.

Nichols in the sum of \$1675, but this defendant denies that he had any knowledge of the alleged agreement between the plaintiff and Daniel H. Nichols and he further denies that the extraordinary haste in securing said judgments were in pursuance of an attempt on his part to hinder and embarrass plaintiff in his right to enforce compliance with the terms of the alleged contract, but as a matter of fact defendant says said action was taken on his part to protect his rights and to secure a lien upon the property of the defendant Daniel H. Nichols. That whether or not the said judgments are liens upon the property of Daniel H. Nichols or constitute clouds upon plaintiff's alleged title are questions of law, and defendant can not answer as to whether the alleged facts are just cause for specific performance or not.

6 and 7. That this defendant has no knowledge or information as to the facts alleged in paragraphs six and seven and defendant calls for strict proof, if material.

22 And now having fully answered, defendant prays to be hence dismissed with his costs.

FRANK O. NICHOLS,
Defendant.

WILSON & BARKSDALE,
Attorneys for Defendant.

Frank O. Nichols on oath says he has read the foregoing answer by him subscribed and knows the contents thereof; that the statements made therein of his personal knowledge are true, and those made upon information and belief he believes to be true.

FRANK O. NICHOLS.

Subscribed and sworn to before me this tenth day of November, 1909.

[SEAL.]

JOSEPH R. FAGUE,
Notary Public, D. C.

Answer of William A. Joline.

Filed Nov. 11, 1909.

* * * * *

Now comes William A. Joline, one of the defendants in the above entitled cause, and for answer to the bill of complaint, or so much thereof as he is advised it is material for him to answer, answering says:

23 1, 2 and 3. That the allegations of paragraph- one, two, and three are admitted as alleged.

4. That defendant is not informed and therefore can not answer as to the allegations of paragraph four and calls for strict proof of all material allegations.

4½. That defendant can neither admit nor deny the allegations of paragraph four and one half, because he has no information in

reference to the matters and things therein alleged, but if said averments are material strict proof is called for.

5. That defendant admits that he obtained a judgment in the Supreme Court of the District of Columbia for \$584.16 against Daniel H. Nichols, but this defendant denies that he had any knowledge or information of the alleged agreement between complainant and Daniel H. Nichols, but this defendant avers that his action in connection with the matter was a *bona fide* attempt to protect his rights and was not an attempt so far as this defendant is concerned to hinder and embarrass complainant in his alleged right to force compliance with the terms of the alleged contract. That whether or not this defendant's judgment is a lien and constitutes a cloud upon complainant's alleged title to the property of Daniel H. Nichols are questions of law that defendant is not called upon to answer, and whether or not the facts as alleged constitute just grounds for specific performance of an alleged contract this defendant is not called upon to answer.

6 and 7. That this defendant has no knowledge or information as to the allegations of paragraphs six and seven and therefore neither denies nor affirms them.

24 And now having fully answered, this defendant prays to be hence dismissed with his costs.

WILLIAM A. JOLINE, *Defendant.*

WILSON & BARKSDALE,
Attorneys for Defendant.

William A. Joline on oath says he has read the foregoing answer by him subscribed and knows the contents thereof; that the statements made therein of his personal knowledge are true, and those made upon information and belief he believes to be true.

WILLIAM A. JOLINE.

Subscribed and sworn to before me this tenth day of November, 1909.

[SEAL.]

ELLEN M. RITTER,
Notary Public, 512 N. 11th St., Phila., Pa.

Term expires Jan. 16, 1911.

Joinder of Issue.

Filed Nov. 24, 1909.

* * * * *

The plaintiff joins issue with the defendant- and each of them on their separate answers filed herein.

MILLAN & SMITH,
Attorneys for Plaintiff.

25

Testimony on Behalf of Complainant.

Filed Mar. 29, 1910.

* * * * *

WASHINGTON, D. C., *January 7, 1910,*
Friday, at 2 o'clock p. m.

Met, pursuant to foregoing notice, to take testimony on behalf of plaintiff in above styled cause.

Present:

Messrs. Millan & Smith, Attorneys for Plaintiff;
Noel W. Barksdale, Esq., of counsel for Defendants;
Also the witnesses and the Examiner.

Whereupon, J. IRVING BEALMEAR, plaintiff herein, and a witness of competent age in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SMITH:

Q. Your name is J. Irving Bealmear? A. Yes sir.

Q. And where do you reside? A. In Baltimore.

Q. What is your business, Mr. Bealmear? A. Real estate.

Q. How long have you been in the real estate business? A. I think about fifteen or sixteen years.

26 Q. Are you the owner of the property in the District of Columbia known and described as Nos. 519, 521, 523, 525, 527, 529, 531, 533, 535, 537 Tennessee Avenue, being lots numbered 18 to 27, both inclusive, in J. Irving Bealmear's Subdivision of Square North of Square 1053, of the City of Washington, District of Columbia? A. Yes sir.

Q. Were you the owner of that property on the 2nd day of March, A. D. 1909? A. Yes sir.

Q. And it still stands in your name? A. Yes sir.

Q. Has there been any change in the title since that time? A. No sir.

Q. Mr. Bealmear, I show you a paper—do you know what that is? (Handing paper to witness, who examined same.) A. Yes sir.

Q. What is it, Mr. Bealmear?

Mr. BARKSDALE: I object to the witness telling what it is; the paper itself will show.

A. It is a contract between Mr. Nichols and myself for the exchange of the properties on Tennessee Avenue and his property.

Q. His property where? A. On Pennsylvania Avenue.

Q. Did you sign that paper? A. I did, sir.

Mr. SMITH: I am going to ask the Examiner now to mark that paper for identification.

NOTE.—The same was accordingly marked by the Examiner, Plaintiff's Exhibit No. 1.

27 Q. Mr. Bealmear, are you prepared and able to and are you willing to carry out your side of the contract as set out in this paper? A. I am.

Q. Have you been so at all times since the 2nd day of March, 1909? A. I have.

Q. Mr. Bealmear, did you have anything to do with the negotiations which resulted in the execution of this paper? A. Did I have—?—I authorized father.

Q. Who is your father, Mr. Bealmear? A. James A. Bealmear. He entered into the negotiations for me.

Cross-examination.

By Mr. BARKSDALE:

Q. You have testified that you own the property 519 to 537 Tennessee Avenue; when did you acquire it? A. I can't tell you the exact date.

Q. About what time? A. I think it has been about five years ago.

Q. Are you the sole owner? A. Yes sir; I am.

Q. Has anyone else any interest in it? A. My father has an interest in it. It was in my name, but it was before we formed a partnership in our city—in Baltimore. It was acquired before we formed a partnership in Baltimore.

Q. What interest has your father in the property now? A. A half interest.

Q. What interest did he have at the date this contract was made, the 2nd of March, 1909? A. The same interest.

Q. You say that you authorized your father to enter into this contract with Mr. Nichols? A. I did.

Q. Was there any writing? A. No sir.

Q. Did he enter into this agreement as one of the partners in the property, or did you specially authorize him?

Mr. SMITH: I object, because this is calling for an opinion from the witness which it seems he could not very well give, as it requires him to testify to the state of mind of Mr. James A. Bealmear at the time he entered into the contract.

A. I specially authorized him.

Q. What authority did you give him? A. Full authority.

Q. To do what? A. To sign for me.

Q. What authority did you give him as to terms? A. To use his own judgment on that.

Q. To make an exchange of the two properties upon such terms as he might see proper to do? A. As he might see proper; yes sir.

Q. You didn't know what the terms of the contract were going to be? A. I did.

Q. That is the question I asked you? A. Oh, well, certainly I

knew, because the matter was talked over in Baltimore before it was closed.

29 Q. Did I understand you to say your authority was in writing, or not in writing? A. It was not in writing.

Q. What did you tell your father when you authorized him to make this exchange of the property?

Mr. SMITH: That is objected to as immaterial, as he says he is prepared and ready and willing to carry out the contract which was signed, in writing, and which fixes and eliminates any question of the details of the authority given to Mr. James A. Bealmear.

A. The matter was talked over to me quite a number of times, and when we had agreed on it, I told him to sign for me.

Q. Told him to sign what? A. The contract for me.

Q. On what terms? A. On the terms set forth there in that contract.

Q. Had you and your father determined upon these terms at the time you last talked with him prior to his entering into this contract?

Mr. SMITH: We object to that for the same reason as above stated. The contract shows the terms as finally agreed upon between the parties, and it is immaterial what Mr. Bealmear may have said to his father.

A. Yes sir.

Q. I see the name J. Irving Bealmear is signed here to this paper; is that your signature? A. Yes sir.

Q. It appears in two places; is it your signature in both places? A. It is.

30 Q. It seems that there has been something else written there; can you tell us what was written there before your name, if anything? A. Yes sir; as well as I can recollect that paper was brought to Baltimore after I had authorized my father to sign for me with my name signed, and it was erased, and I signed myself, the paper.

Q. You mean your name was written there? A. Yes sir.

Q. Had you written it there? A. No, at first it was not.

Q. What name was there? A. My name.

Q. Well, J. Irving Bealmear, J. I. Bealmear, or what? A. As well as I can recollect, J. Irving Bealmear.

Q. Can't you recollect? A. No.

Q. You don't recollect whether it was J. Irving or J. I.? A. No.

Q. Who erased that name? A. I think father.

Q. In your presence? A. Yes sir.

Q. Was any other change made in this paper at that time that you know of? A. Not that I know of.

Q. Was the name erased from both places where it now appears, and J. Irving Bealmear placed there? A. Yes sir.

Q. You didn't sign the name to this contract in either place before it was erased? A. No sir.

31 Q. At the time that the name was erased and your signature placed there, was Daniel H. Nichols' name on there in two places, where it appears signed? A. I can't remember that.

Q. You don't know whether Mr. Nichols' name was on there at the time you signed it or not? A. My impression is it was; yes.

Q. You can't remember? A. No.

Q. Was the name W. H. Sholes on there at the time, in the two places where it appears? A. I don't remember that.

Q. Was the name James A. Bealmear on there at the time you signed? A. I don't remember that.

Q. You didn't erase your name? A. I don't think I did.

Q. I notice some writing here on the back; was that on there at the time that you signed, it being seemingly an acknowledgment before William W. Millan, Notary Public, D. C.? A. I don't remember.

Q. Did you look on the back? A. I can't tell you now.

Q. Your memory about this whole thing is very indistinct, is it not Mr. Bealmear? A. Well, I remember the contract at the time, of reading it over, but I have a very extensive business in Baltimore, and it is quite hard to remember just the——

Q. (Interrupting.) Was this the only paper that you signed at the time? A. Yes sir.

Q. At the time you signed the paper was Mr. W. H. Sholes present? A. No sir.

32 Q. And you signed it in Baltimore? A. Yes sir.

Q. Do you know Mr. Daniel H. Nichols? A. Never met him.

Q. Have you ever seen him? A. No sir.

Q. You say that you are still ready and willing to carry out your part of this contract; have you ever made any tender to Mr. Nichols or to his attorneys, stating that you were ready and willing? A. I have, through my father.

Q. My question is, have you ever done so? A. Personally, no.

Redirect examination.

By Mr. SMITH:

Q. Mr. Bealmear, do you recollect whether this contract about which you have been cross-examined was signed by you in duplicate? A. It is my impression it was signed in duplicate.

Q. Have you looked at this writing on the back? Perhaps it will refresh your recollection as to whether that writing was on there at the time you signed the paper. (Handing paper to witness, who examined same). Look at the dates. A. Oh yes, I do remember now.

Q. Now what have you to say about the writing on the back of this paper, being a certificate of acknowledgment, having been there at the time you signed the contract? A. No, I am wrong—I do not remember it.

Q. You don't remember this? A. No, I can't say I do.

33 Q. Did you come to Washington on or about the 17th day of March, 1909? A. Yes, I did.

Q. Did you come to this office? A. I remember coming in here and making an affidavit that time I was over here.

Q. What do you mean by an affidavit, Mr. Bealmear? A. To my signature.

Q. Do you mean that you acknowledged this paper on that date? A. Yes sir.

Q. Now can you say whether this acknowledgment was on the back of the paper at the time you signed the face of it? A. No it was not.

Recross-examination.

By Mr. BARKSDALE:

Q. Mr. Bealmear, you just said you didn't recollect it; how do you recollect it now? A. I remember coming over at the time with father. I thought it referred to something connected with the paper at the time that Mr. Nichols signed it, but I remember coming over to Washington and going in to Mr. Smith's office and making affidavit to it now.

Q. At the time you came over here on the 17th of March you made an affidavit, did you? A. Yes sir.

Q. And that is all you did? A. Yes sir.

Q. You said a while ago, as I understood you, that you didn't look at the back of this contract. Do you recollect whether
34 you did look at it to see if this was on it? A. I know it was not on it now.

Q. How do you know it? A. Because we concluded to record the paper, and that is the reason I made affidavit to the signature.

Q. My question is whether you looked on the back of this paper to see whether it was there at the time you signed it? A. I think I must have, because it wasn't on there at the time.

Q. My question is, did you look? A. I think I did.

Q. Do you know it was not on there because you looked? A. Yes sir.

Q. And when you came over here on the 17th of March, you signed an affidavit? A. Yes sir.

Q. You say that at the time you signed this paper, that this was the only paper you signed? A. As well as I can recollect; yes.

Q. Do you recollect, Mr. Bealmear? A. It was a duplicate, of course. There were two contracts of sale, and it was a duplicate of that paper that I signed at the same time.

Q. Did you sign two papers at that time? A. Yes.

Q. Now do you remember that you signed two papers? A. I do. I always count them as one; we count them as one in Baltimore.

Q. At the time you signed the other paper did you do the
35 same as this, that is, erase the signature on it and put on your own signature? A. Yes sir.

Redirect examination.

By Mr. SMITH:

Q. I just want to ask you one question more to make the record straight on this point. You say you signed an affidavit; do you mean by that that you made an acknowledgment of this paper? A. Yes sir.

Q. Did you see that writing put on there? (Indicating certificate of acknowledgment on back of paper). A. Yes sir.

Q. Do you know whose handwriting that is? A. Mr. Millan's.

Q. When did he put it on? A. When I was over here.

Q. When you were here on the 17th of March? A. Yes sir.

Mr. SMITH: That is all.

J. IRVING BEALMEAR.

Subscribed before me this 29 day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

36 Whereupon JAMES A. BEALMEAR, a witness of competent age called on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SMITH:

Q. What is your name? A. James A. Bealmear.

Q. Where do you reside, sir? A. Baltimore.

Q. What is your business? A. Real estate.

Q. Mr. Bealmear, I ask you to look at that paper, referring to the paper marked Plaintiff's Exhibit No. 1, and say is you see your name on there? (Handing paper to witness, who examined same). A. Yes sir.

Q. How many times, Mr. Bealmear? A. Twice.

Q. It appear- there as a witness to the signature to this name J. Irving Bealmear? A. Yes sir.

Q. Did you see that signature written? A. Yes sir.

Q. In both places? A. Yes sir.

Q. Whose signature is that? A. My son, J. Irving Bealmear.

Q. Is he the plaintiff in this case? A. Yes sir.

37 Q. Mr. Bealmer, did you represent your son Mr. J. Irving Bealmear in the transaction between him and Mr. Daniel H. Nichols, which transaction seems to be set forth in this contract marked for identification as Exhibit No. 1? A. Yes sir.

Q. Did you have authority from Mr. J. Irving Bealmear to represent him in this transaction? A. I did, sir. Yes, sir.

Q. With whom did you negotiate, Mr. Bealmear? A. With Mr. Nichols.

Q. Are you acquainted with the property on Tennessee Avenue described in this contract as numbers 519 to 537? A. Yes sir, I attended to the building of it.

Q. Are you also acquainted with premises No. 487 Pennsylvania Avenue, Northwest, Washington, D. C. A. Yes sir.

Q. How is that property improved? A. Well, it is improved I believe as a kind of a hotel property.

Q. How is the property 519 to 537 Tennessee Avenue improved? A. With six room and bath dwellings, concrete cellars.

Q. How did you come to meet Mr. Nichols in connection with this transaction? A. Through a Mrs. Sterrett.

Q. Were you present when this contract was signed by Mr. Nichols? A. I was.

Q. Where was it signed, Mr. Bealmear? A. In the second story of Mr. Nichols' hotel on Pennsylvania Avenue.

38 Q. Had you had any interviews of communication prior to that upon this subject? A. Yes sir.

Q. That is, upon the subject of this contract? A. Yes sir.

Q. Did you see Mr. Nichols sign this paper? A. Yes sir.

Q. Was it signed in duplicate? A. In duplicate; yes sir.

Q. Did you see Mr. J. Irving Bealmear sign this paper? A. Yes sir.

Q. Where was Mr Bealmear when he signed it? A. At my home in Baltimore.

Q. Mr. Bealmear, something has been asked the preceeding witness about an erasure of signatures which appears to have been made here; do you know anything about that? A. Yes sir.

Q. Will you please tell us what you know about that erasure? A. Mr. Nichols, Mr. Sholes——

Q. (Interrupting). What Mr. Sholes do you mean? A. Mr. Nichols' attorney.

Q. Mr. William H. Sholes? A. Yes sir. And Mrs. Sterrett met, and negotiations were agreed on of an exchange. I was authorized by Mr. Nichols and Mr. Sholes to prepare agreements as we understood the transaction and bring them over to be signed.

39 Q. Did you prepare this paper? A. I prepared the agreements—the one you hold is one of them, there was that one and one in duplicate, and my son read them over and stated——

Mr. BARKSDALE: I object.

WITNESS: I just wanted to give my reason why it was not signed by him at that time, that was all.

Mr. SMITH: Give the reason without stating what he said.

WITNESS: The reason was that some alteration might have to be made over here, and it would be better if I signed his name after the agreements were accepted by Mr. Nichols as being according to our verbal agreement.

Q. Well, go ahead; you brought the papers to Washington, did you, not signed by anyone? A. Yes sir, not signed by anyone. According to the understanding of the evening before, we met and I signed my son's name to the paper.

Q. What name did you sign, Mr. Bealmear? A. J. Irving Bealmear—as directed by him to do.

Q. Who were present when that was done? A. Mr. Sholes, Mrs. Sterrett and Mr. Nichols.

Q. Did Mr. Nichols sign at the same time? A. At the same time; yes.

Q. Do you remember whether he signed first, or after you? A. He signed first.

Q. Now, what was the occasion for the erasure? A. I told Mr. Sholes——

Mr. BARKSDALE: I object unless it was told in Mr. Nichols' presence.

Q. Who was Mr. Sholes representing, if you know? A. I had signed my son's name to the contract, as he was the owner of record——

40 Q. (Interrupting). What did Mr. Sholes say? A. Mr. Sholes said——

Mr BARKSDALE: I object to all this testimony as to conversation between this witness and Mr. Sholes unless it is first proven that whatever authority that Mr. Sholes gave him was authority that he, Mr. Sholes, had a right as the agent of Mr. Nichols to give. If counsel say that they will connect the two, I will withdraw my objection.

WITNESS: Mr. Sholes handed me his copy of the contract that I had, and said, "You had better take this over and have your son sign himself—erase that and have him sign it"—which I did—"and return this contract to me tomorrow morning", which I did.

Q. Did you deliver the contract to Mr. Sholes? A. On my way from the station the next morning.

Q. That was on March 3rd, 1909? A. Yes sir.

Q. How did you know that Mr. Sholes had anything to do with this transaction, Mr. Bealmear—I mean with the negotiations between you and Mr. Nichols? A. Mr. Nichols stated in my presence that he would be governed entirely by Mr. Sholes, as he had been his counsel for a number of years and he relied upon his judgment entirely.

Q. When did he tell you that? A. The first day that we met—the day that we agreed—the day that he authorized this contract to be drawn, when we agreed and he authorized this contract to be drawn.

Q. Was Mr. Sholes present when you and Mr. Nichols signed this contract? A. Yes sir.

41 Q. Was he taking part in the negotiations? A. Yes sir.

Q. Have you ever made a tender to Mr. Nichols on behalf of Mr. J. Irving Bealmear, to comply with his part of this contract? A. Yes sir, Mr. Smith and myself.

Q. By Mr. Smith you mean me? A. Yes sir, and myself, tried on the 31st day of March, I think, or the 1st day of April, I don't remember which, to see Mr. Nichols by going to his place, and failed to catch him, and the next day Mr. Millan and myself——

By Mr. MILLAN:

Q. (Interrupting.) Do you mean Mr. W. W. Millan of this firm?
A. Yes sir. We went down to Mr. Nichols' place, found him there, and notified him that all the papers on our part were executed. We presented him a deed to his property, and demanded that he carry the transaction out, and without assigning any reason whatever for not doing so, he refused to carry it out.

Q. Did you tender him any other papers? A. We tendered him an executed deed to the ten houses on Tennessee Avenue.

Q. I hand you a paper and ask you to look at that and see if you can recognize it as one of the papers you tendered Mr. Nichols? (Handing paper to witness, who examined same.) A. Yes sir, this is a copy——

Q. Look at that paper, Mr. Bealmear.

Mr. BARKSDALE: I object to this witness testifying as to a copy.

A. Well, it is a lease that was drawn. This is a lease that was drawn as per agreement between Mr. Nichols and myself,
42 of the Pennsylvania Avenue property, in which it is agreed to lease for two years to Mr. Nichols the property we were to get from him, at twenty-five hundred dollars a year.

Q. Look at that paper, Mr. Bealmear, and see if you can identify that as another of the papers which you tendered Mr. Daniel H. Nichols, one of the defendants in this suit? (Handing paper to witness, who examined same). A. Yes sir.

Q. I show you ten promissory notes, and ask you if you can identify them as others of the papers which you tendered Mr. Daniel H. Nichols in compliance with the terms of this contract? (Handing papers to witness, who examined same). A. Yes sir.

Q. Mr. Bealmear, do you recognize the signature to that paper—to that lease? A. Yes sir.

Q. Whose is it? A. J. Irving Bealmear's.

Q. This paper is witnessed apparently by Rudolph J. Motz; do you know him? A. Yes sir.

Q. Where does Mr. Motz reside? A. In Baltimore.

Q. Is he here in the City of Washington to day? A. No sir.

Q. Where is he? A. In Baltimore.

Q. I show you this paper and ask you if you can identify that as another of the papers tendered to Mr. Nichols in pursuance of your contract with him? (Handing paper to witness, who examined same.) A. Yes sir.
43

Mr. SMITH: Mr. Examiner, I offer in evidence the following papers which have been identified by the witness as papers tendered to defendant Daniel H. Nichols in pursuance of the attempt of plaintiff to carry out the terms of the agreement of March 2nd, 1909, namely; a deed, unsigned, between Daniel H. Nichols, widower, of the District of Columbia, and J. Irving Bealmear of Baltimore, Maryland, conveying part of original lot 5, in square 491; a deed of trust, unsigned, dated April 1st, 1909, by and between Daniel H. Nichols of Washington, D. C., party of the first part, and Robert E. L. Smith and blank, of the City of Washington, District of Colum-

bia, parties of the second part; ten promissory notes, dated April 1st, 1909, for fifty dollars each, unsigned, payable to J. Irving Bealmear, or order, at different periods, and secured by deed of trust on lots 18 to 27 in sub. of square N. 1053; a lease signed by J. Irving Bealmear, dated April 1st, 1909, between J. Irving Bealmear of the City of Baltimore and Daniel H. Nichols of the City of Washington, District of Columbia.

NOTE.—The said papers are accordingly filed herewith by the Examiner, marked Plaintiff's Exhibits numbered 2 to 5, inclusive.

Q. Mr. Bealmear, I believe you said you tendered Mr. Nichols another paper; do you remember what that was? A. Yes sir.

Q. What was that? A. It was a deed executed by J. Irving Bealmear to the ten lots mentioned in the contract.

Q. Where is that deed? A. It is at my office in Baltimore.

44 Q. Will you produce it at the next session of testimony, please sir, that it may be proved and offered in evidence? A. Yes sir.

Q. Mr. Bealmear, are you able to say whether the ground described in this deed, unsigned, from Daniel H. Nichols to J. Irving Bealmear, part of original lot 5, in square 491, beginning for the same on Pennsylvania Avenue, at a point distant 28 feet, one-fourth of an inch Northwesterly from the Southeast corner of said lot, and running thence Northwesterly on said Avenue, 27 feet, two and three-fourths inches, to the Southwest corner of said lot; thence Northeasterly on the dividing line between said lot 5 and original lot 6 in said square, 132 feet, four and one-fourth inches to an alley in the rear of said lot; thence Southeasterly on said rear line to a point that would be intersected by a line drawn at right angles to said Avenue from the point of beginning; and thence Southwesterly from said point, in a straight line to the point of beginning, is the same ground upon which the property stands which is referred to in this contract marked for identification as Exhibit No. 1 as 487 Pennsylvania Avenue, Washington, D. C.? A. Yes sir, I think so.

Q. Mr. Bealmear, do you recollect whether you made any other tender of these papers to Mr. Nichols, or to anyone representing him, than the one you have referred to as having been made at the time Mr. Millan was with you? A. I do not.

45 Q. I refresh your recollection; do you remember going to the office of Wilson & Barksdale? A. Oh yes, I do now. Mr. Nichols referred us at first to his attorneys, Messrs. Wilson & Barksdale, at the time we made the demand on him to carry the matter through, and Mr. Millan and myself went around to them and made known to them that we had been referred by Mr. Nichols to them, and they declined to do anything in the matter.

Q. Did you make any statement to Messrs. Wilson & Barksdale, or tender them any papers with regard to the consumation of this matter? A. My best recollection is that we tendered all of the same papers that we had tendered Mr. Nichols, and I told them that I was ready—we were ready to carry out our part of the transaction.

Q. When was that, Mr. Bealmear, if you can say? A. On the

same day that we called on Mr. Nichols, which was, I think, the 1st day of April—either the 1st or the 2nd.

Q. You say it was either the first or the second day of April? A. Yes sir.

Q. Do you remember whether you went to see Mr. Nichols first with me, or with Mr. Millan? A. I first went with you.

Q. Do you remember what day of the month it was? A. Either on the last day of March or the first day of April. I think it was the first day of April, and we failed to find Mr. Nichols in.

Q. Then you subsequently went with Mr. Millan, and found him, and tendered him the papers you have identified? A. Yes sir.

46 Q. Then you say you afterwards went with Mr. Millan to the office of Mr. Barksdale?

Mr. BARKSDALE: I don't think he has testified to that, Mr. Smith, he said he went with you.

WITNESS: No, I went with Mr. Millan the same day that we found Mr. Nichols and he referred us to his attorneys. We went the same day, I think, to his attorneys' office.

Q. Do you recollect whether I was present on that occasion? A. I don't think that you were, I can't remember, but I know I went with Mr. Millan to Mr. Nichols' office, and I am sure it was the same day that we went to his attorneys' office.

Q. What did Mr. Barksdale or Mr. Wilson say in reference to the presentation of the papers? A. To the best of my memory, that they had notice from their client, Mr. Nichols, that he would not carry the transaction through.

Q. Did they assign any reason? A. I don't remember that they did.

Q. How long have you been in the real estate business in Washington, Mr. Bealmear? A. Well, I think it has been nearly six years since we first became interested the last time.

Q. Had you been in the real estate — prior to that, in Washington? A. I dealt in real estate for several years prior to the panic of '93 here.

Q. Were you familiar with the value of real estate in Washington on the 2nd day of March and the 1st day of April, and the interval between, of 1909? A. I think so, in certain localities.

47 Q. You were, of course, familiar with this property you were trading—both pieces? A. Yes sir.

Q. Do you recollect now what trusts were upon the Pennsylvania Avenue property?

Mr. BARKSDALE: I object to that. Whatever trusts were there is a matter of record.

A. One trust for fifteen thousand dollars, and a second trust for twenty-five hundred dollars.

Q. How did you learn this, Mr. Bealmear? A. By notice from Mr. Nichols that those trusts were there.

Q. Do you know what trusts were upon the Tennessee Avenue

houses on the same date—that is, on the 2nd day of March and the 1st day of April, 1909? A. Yes sir; twenty-two hundred dollars on each of the ten houses, making twenty-two thousand dollars on the ten.

Q. What do you say, then, as to the fairness of the transaction, having in mind the trusts on the piece of property owned by your son on the one hand and Mr. Nichols on the other, the transaction being a trade of the one property for the other? A. In my judgment it would have been a very equitable deal, I think, to both sides.

Q. Would you say that either party got an undue advantage of the other in the deal, or not? A. I hardly think so; I am not aware of anything of the kind.

Q. Have you seen Mr. Nichols since the 2nd day or the 3rd day of April, when you last tendered the papers to him? A. No
48 sir.

Q. Has he ever made to you any specific objections to the papers tendered him by you in pursuance of your effort to consummate the contract? A. None whatever.

Q. Mr. Bealmear, you said you were authorized by your son to make these negotiations: were you authorized to carry them to a conclusion? A. I was.

Q. Did you incur expenses in connection with this contract? A. Yes sir.

Mr. BARKSDALE: I object to any testimony along the line of expenses incurred as immaterial and irrelevant.

Q. What expenses, Mr. Bealmear?

Mr. BARKSDALE: Of course you understand my objection goes to all of this.

A. The Columbia Title Company's bill for examining the title to Mr. Nichol's property and drawing the deed.

Q. How much was that? A. Thirty-five dollars.

Q. Thirty-five dollars did you say? A. Yes sir.

Q. I hand you a bill and ask you to look at that and see if your recollection is correct. If not, you can just correct it—it is not very material. (Handing paper to witness, who examined same.) A. Well, this is the Columbia Title Company's bill for \$30.50; I was under the impression it was \$35.

Q. Did you pay that? A. I have not paid it yet; this is the first time I have seen the bill. That is why I said \$35, because
49 I misunderstood what their charges were.

Q. You say you have not seen the bill before? A. I have not seen it before.

Mr. SMITH: I will state that I had forgotten I had it.

Q. They have not called upon you for it? A. No sir.

Q. What is the amount, then, of their charge? A. Thirty dollars and fifty cents.

Q. Mr. Bealmear, the contract between Mr. J. Irving Bealmear and Mr. Nichols was shown you a few moments ago; do you recol-

lect any thing about the recordation of that contract—if so, please tell us about it? A. Yes, I was present.

Q. Where was that certificate prepared? A. At this office.

Q. Who prepared it? A. Mr. Millan.

Q. Did you have that paper recorded in the land records of the District of Columbia? A. Yes sir.

Q. Do you recollect what you paid for that? A. I do not.

Q. Why did you record it, Mr. Bealmear?

Mr. BARKSDALE: I object to the reasons why he recorded it as being irrelevant and immaterial so far as the issues here are concerned.

A. Because I had reasons to believe, or reasons to doubt that Mr. Nichols intended to carry the transaction through, and he might make other disposition of the property.

50 Q. What were those reasons—you said you had reasons to doubt—what were those reasons? A. He had declined through *through* his counsel, and Mr. Sholes who represented him, kept putting me off from time to time to settle the matter up. I was ready on about the 15th of March, and on account of the different appointments made and delayed I suspected that he did not intend to consum-ate the transaction.

Q. Mr. Bealmear, were any other erasures made in this contract than the erasures with respect to signatures? I refer to the paper that is marked for identification as plaintiff's Exhibit No. 1? A. Yes sir, I understand. There were no other erasures.

Q. When you went to Mr. Barksdale's office and tendered yourself ready to carry out this contract, and presented the papers you have referred to, did you make any suggestion to him about correcting anything which might not be correct in regard to the papers? A. I don't remember, sir.

Q. When did you first learn that Mr. Nichols intended not to consum-ate this deal? A. Well, the first positive proof I had of it was at the time Mr. Millan and myself went down and made the demand on him.

Cross-examination.

By Mr. BARKSDALE:

Q. Mr. Bealmear, you say you are a real estate dealer in Baltimore? A. Yes sir.

Q. How long have you been dealing in real estate there? A. Nearly forty years.

51 Q. What is your firm? A. James A. Bealmear & Son Company.

Q. Who is interested in the firm? A. There is directly none but my son and myself. Under the laws of Maryland we had to have five to get the charter, and there was one share of stock that was taken by a brother, and two shares that were afterwards turned back to us.

Q. It is a corporation, then? A. Yes sir.

Q. What interest have you in this Tennessee Avenue property?

A. Well, after certain moneys are paid, about a common interest with my son.

Q. Is this property a part of the partnership or company assets in Baltimore? A. No, none of the Washington property had anything to do with the Baltimore organization.

Q. The interest that you have here belongs to you and your son? A. Yes.

Q. You own half and he owns half? A. Well, that has been the understanding between us, that after certain claims that we considered this property responsible for were paid, whatever profits came out of it that we would be equally interested.

Q. That is to say, after the encumbrances were paid off, whatever profit was made out of it would be equally divided between you; is that right? A. Yes sir.

Q. When did you first meet Mr. Nichols in connection with this matter? A. Some few days before the date of the contract.

Q. That is, a few days before the 2nd of March, 1909? A. Yes sir.

Q. How did you meet him? A. Through Mrs. Sterrett, the broker in the transaction.

Q. Where did you meet him? A. At his place on Pennsylvania Avenue.

Q. Who went with you? A. Mrs. Sterrett.

Q. Did you have negotiations there at the time? A. The first time for the ten houses and the balance of the ground in that square, and we agreed on the terms of a exchange, and Mr. Nichols directed me to draw contracts and bring them over. Under that agreement I was to take also a house that Mr. Nichols had on Four-and-a-half Street. I had the agreements drawn up and brought them over, and I was then notified by Mrs. Sterrett that Mr. Nichols, after consulting Mr. Sholes, his attorney, was advised by Mr. Sholes not to take the lots, as he already had too much unproductive property.

Q. Who was present at the time this agreement was made? A. Mrs. Sterrett.

Q. Anybody else? A. No.

Q. And you, and Mr. Nichols, and nobody else? A. No, I don't think anybody else was present. I said, "Well, let us drop the matter." Mrs. Sterrett said, "No, Mr. Nichols wants you and myself to meet at his place today"—at three o'clock, I think.

Q. That was not in Mr. Nichols' presence that she said this? A. No,—that Mr. Sholes, his attorney, will be there, to see if we can't make an exchange between the Pennsylvania Avenue property and the ten houses, leaving the Four-and-a-half Street property out, and also your lots.

Q. How long was that before the second of March? A. That must have been on Monday, the 1st day of March, I think.

Q. But this other transaction had taken place two or three days before? A. Yes sir.

Q. Well, did you go down on the first of March? A. Yes sir.

Q. And was that the day that you entered into this agreement?

A. The day that we had the verbal understanding.

Q. Was Mr. Sholes there? A. Mr. Sholes was there.

Q. What time was it? A. I think three o'clock.

Q. How long were you there? A. We were there until nearly five.

Q. Where was this? A. At Mr. Nichols' place on Pennsylvania Avenue.

Q. And what place in the hotel there? A. The first day it was downstairs.

Q. I mean on the 1st day of March, when you entered into negotiations and completed negotiations which finally ended in this contract? A. To the best of my memory, it was down stairs.

Q. Your whole conference was downstairs? A. I think so.

54 Q. Where? A. I think it was on the first floor, back.

Q. In a private room, or in the public hall? A. I don't know. It seemed to be about the main part of the first floor.

Q. Do you know what place it is called there? A. No, I do not.

Q. Was it in a room? A. I hardly know whether you would call it a room or not.

Q. Can you describe the place? A. I don't think that I can particularly describe it.

Q. Were you in that particular place or room all the time? A. To the best of my knowledge. I know the second day we were there—the day the contracts were signed, it was in a room on the second floor.

Q. On the 1st of March, who was present when you were having these negotiations? A. Mrs. Sterrett, Mr. Nichols and Mr. Sholes.

Q. Anybody else? A. No, not that I know of.

Q. Nobody else was there, and you were there from three to five o'clock? A. I don't remember seeing anyone else.

Q. You were talking over this matter all the time? A. Yes sir.

Q. Can you tell us what was said there at that time? A. Well, there was a great deal said; I couldn't tell **everything that was said**.

55 The main contention was on the lease that Mr. Nichols wanted on the property—as to the time, and so on—the conditions of that lease.

Q. These people that you have named were there all through the conference? A. Yes.

Q. Is there anything else that was said at the time that you can recollect? A. No, I don't—I can't.

Q. Did you come to a final agreement on that day? A. Yes.

Q. And the agreement that you arrived at that day was the agreement that you then went over to Baltimore and wrote up, and brought back for execution the next day? A. Yes; I brought the contracts back and handed them to Mr. Sholes, I think—Mr. Nichols' attorney, and asked him to read it and see if it conformed to our understanding of the day before.

Q. And they did, did they? A. He read them over and said they did.

Q. When you left here that day, what were your engagements as

to meeting again, if anything? A. The day the contracts were signed?

Q. No, the first day? A. The engagement was to meet there the next day—I think about the same hour.

Q. Three o'clock? A. Yes sir.

Q. Was Mrs. Sterrett there that day? A. Yes.

Q. Who else was there? A. Mr. Sholes.

Q. Who else? A. I don't think anyone else was there.

56 Q. You and Mr. Nichols? A. Mr. Nichols, Mr. Sholes, Mrs. Sterrett and myself.

Q. How long were you there that day? A. We were there that day until near five o'clock.

Q. Were you in the same room that you were in the day before? A. I don't think so—I am not positive, but I know the second day we were there we were up in a room on the second floor. When we went in Mr. Nichols told us to go right upstairs to the room, and Mr. Sholes—we all went up in this room, and Mr. Nichols did not come up until about the time, or just before the contracts were signed.

Q. When Mr. Nichols came into the room, had the contract been signed by either of you? A. No, Mr. Nichols signed first.

Q. Had Mr. Nichols signed the contract before he came up in the room? A. When I handed Mr. Sholes the contracts he read them over and remarked, "I will take them to Mr. Nichols to read."

Q. Where was it you handed them to Mr. Sholes? A. Up in the room on the second floor.

Q. Did Mr. Sholes leave then? A. He left with the contracts, and went down, as I suppose, to show them to Mr. Nichols.

Q. How long was he gone? A. Well, I think about twenty minutes, or more, before he returned with them.

57 Q. Then when he came back, did anybody come with him? A. No.

Q. How long before Mr. Nichols came? A. Mr. Sholes went out several times to see Mr. Nichols, more particularly about the terms of the lease, which we had not fully agreed on, that is, Mr. Nichols wanted to make more changes in the lease, and I did not want to consent to the changes from what was agreed upon the day before.

Q. Do you remember what those changes were? A. Well, one was that he wanted the right to vacate the property without notice—he wanted a two year lease and the right to vacate without any notice, and I would not consent to that, and then he wanted the right to a five year lease—two years with the privilege of three more, and that I would not consent to.

Q. Was that the only fault that he found with the contract? A. That was the only fault that I had any notice of.

Q. And the only trouble you had the day before in your negotiations were the same thing? A. About the same thing; yes.

Q. By about the same thing, you mean about the same subject matter? A. Yes.

Q. You testified, Mr. Bealmear, with reference to the values of

these properties. Have you ever sold any property near 487 Pennsylvania Avenue? A. No sir.

Q. Have you ever bought any? A. No sir.

58 Q. Do you know of any other purchases that have taken place down there? A. Only I have occasionally heard of sales being made there.

Q. But you don't know of any? A. No.

Q. By what means did you fix the value of that property, as you have testified? A. Well, the size of the lot as given to me by Mr. Nichols and as put in the agreement. I placed a certain value per square foot on it, and then a value upon the improvements—I went through the house and examined it. My principal value put on the property was what I could make it by turning it into a first class business property. I was, however, deceived in the size of the lot. The actual size of the lot, of record, does not come up by a considerable number of feet to what the agreement calls for.

Q. Are there any other means that you used to establish the value that you fix here? A. No; the principal thing is what it could be made as a business property.

Q. Have you ever bought or sold any other property in the vicinity of this Tennessee Avenue property lately? A. No sir.

Q. Had you at the time of this contract? A. No sir.

Q. Do you know of any other sales that had been made there by anybody else? A. A great many.

Q. Is that the means by which you estimated the value of this property? A. That, and others.

59 Q. What others? A. Well, general inquiry among those who were better in the business as to values.

Q. Have you made any recent sales of property in the District of Columbia? A. Yes sir.

Q. When? A. The last within three months back.

Q. Where was it located? A. Twelve lots of ground running from the corner of B and 17th Street, Southeast.

Q. How far from this Tennessee Avenue property? A. Well, I expect ten squares—maybe more, I don't know.

Q. When was the last sale you made prior to that time? A. I sold some lots below these same lots less than two years, I think, ago, on 17th Street, Southeast.

Q. How far was that from this Tennessee Avenue property? A. From the Tennessee Avenue property I expect twelve or fifteen squares.

Q. When was the last sale you made prior to that in the District of Columbia? A. In, I think, about 1905, I sold a piece of ground for eighteen thousand that I had bought, on 14th Street, Northwest.

Q. How far is this from this Tennessee Avenue property? A. That is in another different section of the city—that is in the northwest.

Q. When was the last sale you made prior to that? A. I don't remember.

60 Q. You can't recollect? A. No, I can not.

Q. Do you think it was within five years? A. I don't re-

member of any sale that I had made prior to that since I started back here about six years ago.

Q. Which was in 1893? A. Well, I ceased coming here in '92, and didn't come back any more until five or six years ago—that is about the tale.

Q. You say that you were present at the time that Mr. Daniel H. Nichols signed this agreement marked Exhibit No. 1? A. Yes sir.

Q. I see your name appears there in two places as a witness? A. Yes sir.

Q. Did Mr. Nichols request you to witness that? A. Mr. Sholes requested me.

Q. Answer my question; did Mr. Nichols request you to witness that? A. No, but Mr. Sholes did.

Q. Mr. Sholes asked you to witness it? A. Yes sir.

Q. In Mr. Nichols' presence? A. I think so.

Q. Did you witness it in Mr. Nichols' presence? A. I think so; we were all there together.

Q. So you signed your name, James A. Bealmear, as a witness to the signature of Daniel H. Nichols? A. No. I would like to see the contract where you refer. (Examines paper marked Plaintiff's Exhibit No. 1.) I would like to explain that. I signed as a
61 witness to my son's signature. I was present when Mr. Nichols signed the agreement, but I did not sign as a witness to his signature.

Q. Now I understand you to say that you saw Daniel H. Nichols sign this paper, and you did not sign as a witness in his presence or at his request? A. No, I did not.

Q. But at the time that he signed it, you signed the name of your son? A. Yes sir.

Q. What name did you sign? A. J. Irving Bealmear.

Q. Did you sign J. Irving Bealmear, or J. I. Bealmear? A. J. Irving Bealmear.

Q. In both places? A. Yes.

Q. Do you know whether or not Mr. Sholes witnessed this paper at the same time? A. It was Mr. Sholes who witnessed the signature that Mr. Nichols signed.

Q. And Mr. Sholes witnessed the signature of Daniel H. Nichols and the signature that you placed there—J. Irving Bealmear? A. Yes.

Q. The signature J. Irving Bealmear as attached to this contract at the present time is not the signature that you attached to it? A. No sir.

Q. Who did attach these signatures? A. J. Irving Beal-
62 mear attached them himself. I took the contract home at the request of Mr. Sholes and in the presence of my son erased his name that I had written there and said to him that Mr. Nichols' attorney thought that it was best for him to sign himself, as it would save any dispute hereafter, and he signed, and then it was that I witnessed his signature.

Q. Now, on the 2nd of March Daniel H. Nichols and you signed this contract? A. Yes sir.

Q. After that was done, what became of the contract which was supposed to have been signed in duplicate? A. I took one, and Mr. Nichols took the other, and we started up to the Columbia Title Company to put up the papers.

Q. What do you mean? A. Mr. Sholes and myself started up. Mr. Sholes said he wanted the matter hurried through, and said, "Who is going to examine your title?" I said, "The Columbia Title Company." He said let's go up there and put this deed from Mr. Nichols to my son in their hands so as to hurry it through, and he went with me to the Columbia Title Company and joined with us in our petition for a hurried examination of the title and to prepare the deed. On our way up to the Title Company——

Q. (Interrupting.) How far had you gotten? A. But a short way. I mentioned to Mr. Sholes that the signature—the name put on the contract was my son's, as he was the holder of the record title, and he said—I had one contract and he had the other—I had one contract and Mr. Sholes had the other. He handed me his contract and said, "I think it is best for you to take this home
63 with you and erase your son's name there and let him sign himself, as it may save some dispute hereafter", and that I did.

Q. That was after you had left Mr. Nichols' place? A. Yes, that was after we had left Mr. Nichols' place.

Q. And Mr. Nichols was not with you? A. No.

Q. And knew nothing about this matter? A. Not that I know of.

Q. You didn't say anything about it? A. I didn't say anything about it because Mr. Nichols said, "Whatever Mr. Sholes does in this matter I will stand by."

Q. And at this time this contract had been signed by Mr. Nichols, and by you for your son, and had been delivered, your copy to you and Mr. Nichols' copy to him, and then you left there and came out with Mr. Sholes, leaving Mr. Nichols there, and then it was that you informed Mr. Sholes that the property stood in your son's name, and then it was that he requested you to have your son execute the contract? A. Yes.

Q. Did he say anything to you about erasing the name of your son? A. Yes, he said, "Erase the name of your son, and let your son sign himself."

Q. Is that all he said? A. "And return the contract to me as you come over tomorrow", which I did the next day.

Q. And that was all he said to you? A. That was all he said to me.

64 Q. Did he request you to erase your son's signature? A. Yes.

Q. I thought you said that was all he said? A. Well, he said for him to sign it, and to witness it, of course.

Q. Then he did say something more to you? A. He asked me to have it witnessed, of course.

Q. You are sure that he told you to erase the name of your son that you had attached to this contract, and have your son sign it, and you witness his signature? A. Yes.

Q. You then took the contract over to Baltimore and had your son sign it, and then returned it to Washington? A. Yes sir.

Q. Your son never took any part in the negotiation or the execution of this contract in the District of Columbia? A. No sir.

Q. When and where was it that Mr. Nichols said that he would be governed entirely by what Mr. Sholes said? A. In Mr. Nichols' place.

Q. Was that before the contract was signed, or afterwards? A. That was before the contract was signed, during the negotiations. He said, "I will be governed by the advice of my attorney, Mr. Sholes, in whom I place implicit confidence; he has attended—" I think he said—"for twenty years to my business for me."

Q. You say you think the value of the two properties is about the same? A. I think so.

65 Q. What advantage would it be to you to exchange if you thought they were about the same?

Mr. SMITH: I object to that because it is immaterial.

A. I considered Mr. Nichols' property in its present condition of the value that I was taking it at, but I did think that by the expenditure of some six or seven thousand dollars on the property that I could make a business property of it that would pay.

Q. Now, what day was it that you made this tender to Mr. Nichols? A. Either on the first day or the second day of April, but I cannot remember distinctly which.

Q. Why can't you fix the time, Mr. Bealmear? A. I will tell you. I first went with Mr. Smith of this firm once or twice to see Mr. Nichols to make a tender. We could not find him. Then he said, "You had better come over tomorrow and make another effort." I did, and when I came over the next day, I went with Mr. Millan. Now, it was either on the 31st day of March I went with Mr. Smith, or the 1st day of April, or if it was the 1st day of April I went with Mr. Smith, then it was the 2nd day of April that the actual tender was made to Mr. Nichols.

Q. So that you can't tell us whether the actual tender was made on the 1st or the 2nd day of April? A. No.

Q. When you did go with Mr. Millan, and saw him, it was on the 1st or the 2nd day of April? A. On the 1st or the 2nd day of April.

Q. When was the next tender you made? A. I never made
66 any other tender to Mr. Nichols after that.

Q. When was the next tender you made to anybody? A. I think the same day, after we left Mr. Nichols we went to his attorneys' office—to your office, because at first, when the demand was made, he didn't refuse to carry it through, but said, "I refer you to my attorneys, Messrs. Wilson & Barksdale." When pressed for his answer, whether he would carry the transaction through or not, I think he said he didn't intend to carry it through—he refused to carry it through.

Q. Who said that? A. Mr. Nichols.

Q. Where? A. At his place.

Q. Where was he *when* you went there? A. He had gone in the little office, I think, at the front, and we called him.

Q. Is that where you had your negotiations? A. We just went there and talked with him.

Q. Who heard the conversation? A. I don't know. Mr. Millan and myself were together, and some boys were in the office, but Mr. Nichols had come outside of the office, and I don't know that anyone was actually immediately present.

Q. And then what did you and Mr. Millan do? A. We came out, and I think that Mr. Millan and myself came around to your office.

Q. Whom did you see there? A. Well, I judge it must have been your partner. He was, I think, a stouter gentleman than you. I was introduced to him at the time as one of the firm.

Q. That was on the same day? A. I am sure of it.

67 Q. When was the next time? A. There was no next time that any tender was made. After a positive refusal I didn't think there was any necessity for it.

Q. So you are sure you never went to the office of Wilson & Barksdale but one time? A. I don't think I was ever in your office but one time; I am confident of that.

Q. And that was the time you went there with Mr. Millan? A. Yes sir.

Q. Which time you fix as either the 1st or 2nd day of April? A. One of the two.

Whereupon the further cross-examination of this witness was postponed until the next session.

JAS. A. BEALMEAR.

Subscribed before me this 28 day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

68 Whereupon (Mrs.) LUCY V. STERRETT, a witness of competent age called on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SMITH:

Q. Where do you live, Mrs. Sterrett? A. 513 F Street, Northwest.

Q. What is your business, and what was your business on March 2nd, 1909, and thirty to sixty days prior thereto? A. Thirty to sixty days prior thereto I was in the brokerage business, selling business *business* places.

Q. What was your business on March 2nd, 1909? A. Real estate, and businesses also.

Q. About how long had you been handling real estate prior to March 2nd, 1909? A. When I first opened up, I took out a license

for the real estate business, in September. Then my license expired in November, 1908, and from that time on I handled business places, that is all I did until I got into the real estate business again—I got another license.

Q. Can you tell us about when you got the second real estate license? A. I would have to look at the license.

Q. About how long was it before the 1st of March—do you think it was a month? A. I can't remember; I would have to look at the license.

Q. Are you acquainted with Mr. Daniel H. Nichols? A. Yes.

69 Q. Do you know Mr. James A. Bealmear? A. Yes.

Q. Did you have anything to do with the arrangement between Mr. Nichols and Mr. Bealmear for an exchange of properties, namely, the property known as No. 487 Pennsylvania Avenue on the one hand, and ten houses known as Nos. 519 to 537, inclusive, Tennessee Avenue, Northeast, on the other? A. Yes.

Q. Were you present when Mr. Bealmear and Mr. Nichols had any negotiations with regard to this property? A. Yes.

Q. Were you present on March 1st, 1909, when the contract was signed between Mr. Nichols and Mr. Bealmear? A. I can't remember dates.

Q. Were you present at any time when these gentlemen signed the contract in regard to these properties? A. Yes.

Q. Did you represent one or both of these parties? A. I represented both.

Q. Were you to get a commission or compensation for your services? A. Yes.

Q. From whom? A. From both.

Q. Each one was to pay you something for your services? A. Yes sir.

Q. Have you seen Mr. Daniel H. Nichols since April 1st, 1909?

A. I don't remember dates.

70 Q. Have you seen him during the past summer? A. I don't remember.

Q. Have you seen him since he entered into this contract? A. Yes sir.

Q. How long afterwards? A. I don't remember.

Q. About how long? A. I don't remember.

Q. Have you had any interviews with him since that? A. Yes sir.

Q. Have you had any interviews with him since your services in this matter were completed? A. Yes sir.

Q. What did you see him about? A. I asked him for my commission.

Q. Did he pay you? A. No sir.

Q. Did he say why he would not? A. He said there was no deal made; that there was misrepresentation.

Q. Is that all he said? A. The first time that is all he said. I wanted to talk to him and he wouldn't talk about it.

Q. Did you see him further? A. Yes sir.

Q. Did he give you any other reasons? A. He said Mr. Bealmear had not paid off the twenty-five hundred dollar trust.

Q. How did he come to tell you that, Mrs. Sterrett? A. I was passing and he came to the door, and I asked him how he was, and he said he was sorry that they could not agreeably settle that matter.

71 Q. Did he say why they could not agree? A. He said Mr. Bealmear had not paid the twenty-five hundred dollars—that is the substance. I can't remember the exact words.

Q. Did you have any subsequent interviews with him? A. No, I don't ever remember seeing him since.

Cross-examination.

By Mr. BARKSDALE:

Q. When was it you had these interviews? A. I can't remember dates.

Q. Can you tell us whether it was in 1908 or 1909? A. It was in 1909.

Q. What part of 1909? A. I can't remember things like that. I am so busy all the time; I didn't write it down, and I can't remember numbers and dates and names unless I write them down—I am so busy all the time.

Q. What commission were you to receive from Mr. Bealmear for the negotiations? A. Five hundred dollars.

Q. Has he paid you? A. No sir.

Q. Still owes it to you? A. Yes sir.

Q. Has he made any arrangements about it?

Mr. SMITH: I object to that as incompetent and immaterial.

A. Not lately.

Q. When did he make any arrangement as to your commission?

72 Mr. SMITH: I object to this entire line of testimony as incompetent, immaterial and irrelevant.

A. I don't quite understand what you mean. I don't know how to tell it unless you let me tell it in my own way.

Q. Well, tell what arrangement he has with you? A. I told him that I needed the money so bad that if he would give me \$250 to pay my rent and not be thrown out on the street I would take \$250, but he refused to pay me because Mr. Nichols did not give him the deeds. He refused to pay \$250 on the ground that he didn't get the deed, and he said he would straighten it out with me when he got the deed. That understanding was so that I could save my office from being disrupted and from being thrown out on the street, and my business destroyed.

Q. You have never brought any suit against him for it, have you?

Mr. SMITH: I object to the question because it is immaterial and irrelevant.

A. Oh no, I don't like suits.

Q. Were you a licensed real estate broker on the 2nd day of March, 1909? A. I was.

Q. Where is your license? A. I have it at my rooming house—my office is all torn up—and it is on record at that time.

Q. Are you sure that you had your license at that time, and that it covered that period? A. I certainly had; when that contract was signed I had my license.

Q. Do you know when that license expired? A. I think in this last November.

73 Q. And how long prior to that had you acquired the license? A. I don't remember; I would have to look at the license.

Q. How did you get in communication with Mr. Bealmear? A. I was reading the advertisements in the paper, so I saw James A. Bealmear & Son advertised all this property—ten properties to be exchanged.

Q. When was it you went with Mr. Bealmear to Mr. Nichols' office? A. As I remember it, it was sometime the first of March.

Q. Were you there during the negotiations? A. I was.

Q. All the time? A. I was.

Q. Who else was there? A. Mr. Sholes, Mr. Bealmear and Mr. Nichols. Mr. Nichols was not there all the time the last time.

Q. Was anybody else present? A. I don't remember anyone.

Q. Where was it the negotiations took place? A. The first took place on the first floor, right back of the office; the second on the second floor. Mr. Nichols was in the little hallway, and Mr. Sholes ran back and forth.

Q. How long were you there? A. I don't remember that at all.

Q. Do you remember what time you went there? A. I think it was sometime between two and three—I can't remember exactly.

74 Q. You don't remember how long you stayed? A. No. Q. That was on the first day? A. Yes.

Q. Was that the day the contract was signed? A. It was not signed; there was a verbal understanding that day.

Q. Do you remember what the verbal understanding was? A. That it would be closed up the next day.

Q. Do you remember what the terms were of the exchange agreed upon? A. Yes sir; the first was dropped by Mr. Sholes' advice.

Q. What were the terms of the agreement that first day?

Mr. SMITH: I object to this question for the reason that there is a written contract which speaks for itself. The verbal agreement, of course, is merged in the written one, and therefore the question is incompetent, irrelevant and immaterial.

A. Well, I don't understand that. They met the next day and signed up.

Q. What did they say the original contract should contain? A. The original contract contained the property on the Avenue and on Four-and-a-half Street.

Q. What property? What did they agree to do there that day—

do you remember? A. To meet the next day and sign up the contract.

Q. They were to make the exchange of the two properties on what terms? A. I don't just exactly remember all that they first said, because my mind got centered on the other.

75 Q. Were you down there the day the contract was signed up? A. Yes sir.

Q. Where was it signed? A. It was signed in the parlor.

Q. What floor is that on? A. Second.

Q. Is that on the same floor where the negotiations took place? A. Yes sir, the last negotiations.

Q. You mean the last negotiations on the day before? A. The last negotiations were the day they signed up the contract, on the second floor.

Q. You were only there on two occasions, wer-n't you? A. I don't remember how many times I was there—whenever it was necessary. I know I was there twice.

Q. Were you there oftener than that? A. I don't remember. I know I was there twice, and I think three times.

Q. Do you know whether you were there two times or three times? A. I know twice, and I think three times.

Q. What were you there the third time for? A. To sign up the contract.

Q. Who was present the day the contract was signed? A. Mr. Sholes, Mr. Bealmear, Mr. Nichols and myself.

Q. Anybody else? A. No sir.

Q. Anybody else in the room? A. No sir.

76 Q. How long were you there? A. I don't remember.

Q. Was it afternoon or forenoon? A. Afternoon.

Q. What time? A. Two o'clock—two-thirty to four; I don't exactly remember.

Q. What time did you leave? A. I don't remember.

Q. Do you remember any trouble that arose there other than with reference to the lease, to the terms of conveyance? A. I don't remember anything else.

Q. They did have some trouble about the terms of the lease, didn't they? A. No particular trouble, but delay. There was a lot of talk back and forth.

Q. On account of the terms of the lease? A. Yes.

Q. Is that all? A. That is all I can remember.

Q. You could remember if there was anything else, couldn't you? A. I can't think of anything else.

Q. Did you see them all sign there that day? A. Yes sir.

Q. Do you know Mr. J. Irving Bealmear? A. I didn't know him at that time. I know him now.

77 Q. Who is he? A. This gentleman's son. (Indicating Mr. James A. Bealmear.)

Q. When did you meet him? A. I met him in Baltimore some weeks ago, in his office.

Q. Was that the first time you met him? A. Yes sir.

Q. Do you know this gentleman? (Indicating Mr. James A. Bealmear.) A. Yes sir.

Q. What is his name? A. James A. Bealmear.

Q. When did you first meet him? A. I don't remember the date. All I remember is seeing the advertisement in the paper and then trying to find him, and I was quite a while finding him.

Q. Do you know who owned this Tennessee Avenue property? A. It was always James A. Bealmear and Son, and I always supposed that he and his son owned it. That was just a supposition of mine, I don't know that.

Mr. SMITH: I move to strike out the answer because it is incompetent, and shows that the witness does not know anything about the ownership of the property.

Q. Do you know whether it is owned by James A. Bealmear and Son, or not? A. I know that when the contract was signed, Mr. Sholes required that his son sign it also.

Q. When did you first find that out? A. I don't remember whether it was the afternoon when the contract was signed or not.

78 Q. Was anything said about it down there at the hotel? A. That I don't remember, but it seem to me, I don't know positively, that Mr. Sholes requested him to take it over and have his son sign it.

Q. Was that done down at the hotel? A. As I remember it.

Q. Are you testifying to what you know, or what you heard afterwards? A. I have a faint impression that it was suggested there, but I don't know positively.

Q. Do you know whether it was? A. I don't know positively.

Q. Was Mr. James A. Bealmear the man who came to you about the property? A. I think I found him.

Q. He was the first man you talked to about it? A. Yes.

Q. You didn't have anything to do with Mr. J. Irving Bealmear personally, did you? A. Only through letters from the firm; his name is on the letter-head.

Q. You never met him personally in connection with this transaction? A. Not personally.

Q. Your dealing was only with Mr. James A. Bealmear personally, I mean? A. Personally, yes, but with the firm by letter.

Q. When you saw Mr. James A. Bealmear, you took him down to the hotel to see Mr. Nichols? A. I think we went down on the car together, as I remember; not the very first day I saw him, I don't think.

79 Q. You went down with James A. Bealmear to see Mr. Nichols? A. Yes sir.

Q. Did you know his name then? A. Certainly.

Q. How did you introduce him to Mr. Nichols? A. As Mr. Bealmear, of the firm, and I spoke very highly of them to Mr. Nichols—that they were a very wide-awake firm there, and very highly respected there.

Q. Did you tell Mr. Nichols who owned this property? A. I spoke of James A. Bealmear and Son as owning this property.

Q. Did you state to Mr. Nichols who was the owner of this Tennessee Avenue property? A. I told him I would introduce him to Mr. Bealmear, that he and his son were running as real estate office as James A. Bealmear & Son, of Baltimore, and then I introduced him to Mr. Bealmear—introduced him as of the firm of James A. Bealmear & Son, of Baltimore. I had told him before of them before I took him there.

Q. Did you know when you introduced Mr. Bealmear to Mr. Nichols who owned the Tennessee Avenue property?

Mr. SMITH: That is objected to as irrelevant and immaterial.

A. I took Mr. Bealmear's word.

Q. Did you say that they owned it? A. He said that he never did anything without consulting his son, and his son never did anything without consulting him; that is all I know about it.

Redirect examination.

By Mr. SMITH:

Q. Before you took Mr. Bealmear to see Mr. Nichols, had you interviewed Mr. Nichols about this exchange of properties?

80 A. Yes sir.

Q. Had you had Mr. Nichols' property, 487 Pennsylvania Avenue, on your list for sometime prior to this? A. Yes sir.

Q. At what price were you holding it; do you remember? A. There were two prices to be put in, at a certain valuation.

Q. You don't understand me. Before you ever heard of Mr. Bealmear, did you have No. 487 Pennsylvania for sale? A. For trade or sale; yes.

Q. At what figure were you holding No. 487 Pennsylvania Avenue? A. On an exchange we usually have a different price than the best cash figure. In real estate, as a rule, a man has a different price for a trade from a cash proposition.

Q. What was your exchange price to Mr. Bealmear? A. Thirty-five thousand.

Q. I suppose you took Mr. Nichols to see Mr. Bealmear's property, did you? A. No; I gave him a plat, and he went to see them himself.

Q. Did you put a price on Mr. Bealmear's property to Mr. Nichols? A. Forty thousand dollars.

Q. Did Mr. Nichols say anything to you about this price of forty thousand dollars?

Mr. BARKSDALE: I object on the ground that it is not responsive to anything brought out on direct examination, and this witness was not interrogated on anything about the price on direct or
81 cross-examination, and it is therefore improper and immaterial.

A. Yes.

Q. What did he say? A. He says, "It is a very nice little property, Mrs. Sterrett," but he says, "I think the price is a little too high." I says, "What do you think it is worth, Mr. Nichols?" He

said, "About thirty-five hundred each—thirty-five thousand all together." Then I said to Mr. Nichols that on a cash basis anyone would take less for *for* the property, but on an exchange the price was quite a little higher, and I asked him what would be the least cash he would take, and it seems to me he said thirty thousand dollars, and I said, "If you think Mr. Bealmear's property is five thousand dollars too high, which it may be, I will inflate your property five thousand, so that it will be a fair exchange and no robbery to either of you or Mr. Bealmear, because I want a fair deal to you both, and I didn't think this property was worth——"

Q. (Interrupting.) Did you quote to Mr. Bealmear a price of thirty-five thousand dollars for the Avenue property?

Mr. BARKSDALE: My objection applies to all this line of examination.

A. Yes, I did; I put it at thirty-five thousand.

Mr. SMITH: That is all.

LUCY V. STERRETT.

Subscribed before me this 28 day of March 1910.

P. H. MARSHALL,
Examiner in Chancery.

82 NOTE.—At this point an adjournment was taken until Friday, January 14, 1910, at 2 o'clock P. M.

_____,
Examiner in Chancery.

WASHINGTON, D. C., *January 14, 1910*
FRIDAY, at 2 o'clock, P. M.

Met, pursuant to adjournment.

Present:

Messrs. Millan & Smith, Attorneys for Plaintiff;
Noel W. Barksdale, Esq., of counsel for defendants;
Also the witnesses and the Examiners.

Whereupon JAMES A. BEALMEAR, a witness previously sworn and examined herein, resumed the stand, and was examined and testified as follows:

Cross-examination (continued).

By Mr. BARKSDALE:

Q. Had anything been said about who held the record title to this property prior to the time you had your conversation with Mr. Sholes on the street? A. Which property?

Q. The property that you were transferring or exchanging—the property that is in Bealmear's name? A. I think not, sir.

Q. And when you mentioned to Mr. Sholes that the title was in

83 your son's name, that was the first time that anything was said about it? A. To the best of my knowledge; yes.

Q. How was the Bealmear property encumbered? A. With a building association trust for twenty-two hundred dollars on each house.

Q. Making how much all together? A. Twenty-two thousand dollars, of course.

Q. And what were your monthly payments? A. At the time that I applied for this laon, which was a builders' loan——

Q. (Interrupting.) I mean what were the monthly payments to the building association at the time of this contract? A. \$110 interest each month.

Q. What association? A. The Perpetual Building Association of Washington.

Redirect examination.

By Mr. SMITH:

Q. Let us see if we can get a little more clearly the record with regard to your tender to Mr. Nichols of the deeds and other papers which you say were tendered him in attempted consum-ation of this deal. Dis you bring with you the deed which we referred to at the last session, for the Tennessee Avenue houses? A. I did. (Witness produces paper.)

Q. Is this the deed, Mr. Bealmear? A. The same deed that we tendered Mr. Nichols.

Q. In its present form? A. Yes sir.

Q. Is this your signature, Mr. Bealmear? (Pointing to signature of attesting witness, James A. Bealmear.) A. Yes sir.

84 Q. Did you see Mr. J. Irving Bealmear sign that paper? A. Yes sir.

Q. Is that Mr. J. Irving Bealmear's signature? (Indicating.) A. Yes sir.

Mr. SMITH: I now offier in evidence the deed, bearing date April 1st, 1909, from J. Irving Bealmear to Daniel H. Nichols, conveying lots 18 to 27, both inclusive, in James I. Bealmear's subdivision of square north of 1053, etc., in the City of Washington, District of Columbia.

NOTE.—The same is accordingly filed herewith by the Examiner, marked "Plaintiff's Exhibit No. 6."

It is stipulated between counsel that the above paper, Exhibit No. 6, may be filed with the Examiner in its present condition, and that the Examiner may immediately cancel the name J. Irving Bealmear appearing opposite the seal on said paper, by writing the word "Cancelled" across said name, and signing the Examiner's name thereunder.

NOTE.—In pursuance of above stipulation, the Examiner cancelled said signature as above directed.

Q. Mr. Bealmear, was this paper which has just been offered in evidence presented to Mr. Nichols by you, or anyone for you in your presence? A. Was it presented to Mr. Nichols?

Q. Yes? A. Yes sir, it was presented to Mr. Nichols by Mr. Millan and myself. I don't remember which one of us had the papers; we went together to Mr. Nichols' place and all of the papers were presented to him.

Q. What date was that, do you know? A. I remember now that it was on the 2nd day of April.

Q. On the 2nd day of April? A. Yes sir.

85 Q. Where? A. At Mr. Nichols' place on Pennsylvania Avenue.

Q. No. 487 Pennsylvania Avenue? A. I think that is the number.

Q. At the same time you presented this paper, did you present any other papers? A. Yes sir.

Q. Did you present at the same time the papers which have been offered in evidence heretofore? A. Yes sir.

Q. And at that time you were uncertain whether it was the 1st or 2nd day of April, I believe? A. At that time I was uncertain, but I have been able to convince myself since that it was on the 2nd day of April.

Q. Do you know whether these same papers—all of them, were presented to anyone representing Mr. Nichols subsequently to the day you name? A. I went with you on the 1st day of April to Mr. Nichols' place, and was told there——

Mr. BARKSDALE (interrupting): I object.

Mr. SMITH: Go ahead until we hear what it is.

WITNESS (continuing) —that he had gone to his counsels' office—Messrs. Barksdale & Wilson's office. Mr. Smith called up the office of Messrs. Barksdale & Wilson to know if Mr. Nichols was there. He was told he was not——

Mr. BARKSDALE (interrupting): I object.

Mr. SMITH: You can't say what you were told; just say what we did thereafter.

Q. Did you and I go to Mr. Barksdale's office? A. I can't remember whether we did or not that day. On the next day, the 2nd of April, Mr. Millan and myself went to Messrs. Barksdale
86 & Wilson's office, but I do not remember whether Mr. Smith was with us or not.

Q. Well, what did you do when you got there? A. Mr. Millan stated that we were there for the purpose of——

Mr. BARKSDALE (interrupting): I object unless the witness is able to tell to whom he stated what he is about to say.

Q. Who did you see around there, Mr. Bealmear? A. I saw, I think, Mr. Wilson and Mr. Barksdale, if I remember rightly.

Q. Well, what did you say? Did you tell them why you came there? A. Yes sir.

Q. What did you tell them? A. That we had been referred to them to see if Mr. Nichols intended to carry the transaction between us through.

Q. Well, what else did you do? Did you present any papers?
A. Yes sir. One of the two attorneys, I don't remember whether it was Mr. Wilson or Mr. Barksdale, took all the papers and looked them over carefully. Mr. Millan suggested to them to look them over; that if there was anything wrong we would try to correct it. He looked them over carefully and return them without any comments.

Q. That was the end of your interview? A. Yes sir.

Q. Mr. Bealmear, you have already testified, I believe, that there was not quite as much land in the Pennsylvania Avenue lot as Mr. Nichols had represented to you, and as stated in the contract. I ask
87 you to look at this paper, which is marked Exhibit No. 2, being an unsigned deed from Daniel H. Nichols to J. Irving Bealmear, and say if you can why the land described in that deed which you tendered Mr. Nichols does not embrace all the land which is described in the contract between Mr. Bealmear and Mr. Nichols?

Mr. BARKSDALE: I object, as this is not proper redirect examination, no question whatever having been asked upon this matter on cross-examination, and it is not responsice to anything brought out on cross-examination.

A. The contract called for a lot 27 feet 7 inches front on Pennsylvania Avenue, running back an even depth of 140 feet. The deed gives only 27 feet, two and three-fourths inches front, by 132 feet, four-and-a-quarter inches. My *maon* value being in the square feet of ground, this shortage in my estimation amounts to considerable.

Q. When did you first discover that shortage? A. When the deed was presented to me from the title company.

Q. Was that before you presented the papers to Mr. Nichols? A. No sir.

Q. I guess you don't underatand me. You said you first discovered this when the title company gave you the deed? A. Yes sir.

Q. You said here before, I believe, that you presented that deed to Mr. Nichols, and necessarily you discovered this shortage before you presented it? A. Yes sir.

Q. And you were still willing to carry out the contract, notwithstanding the shortage in the property? A. Yes sir.

88 Q. And you were acting on behalf of Mr. J. Irving Bealmear? A. Yes, my son left the matter entirely to me, he not being acquainted with the values of property in Washington.

Recross-examination.

By Mr. BARKSDALE:

Q. Where did you get the description of the property that you put in the contract? A. Of which property?

Q. The pennsylvania Avenue property—the Nichols property?
A. From Mr. Nichols himself.

Q. Did he give it to you and you wrote it down, or did you take it from papers? A. I wrote it down at the time. He gave me a plat

of the property, with the front and depth of the lot marked on it—a pencil drawing.

Q. The difference, thought, was considerable in the matter of the number of square feet involved in the description of the property that Nichols gave you, and the description in the deed from the title company, was it? A. I think about two hundred square feet.

Q. And yet you were willing to carry out your part of the contract? A. Yes sir.

Q. What is the value of that property there, in your opinion, per square foot? A. On Pennsylvania Avenue?

Q. Yes? A. Well, I thought about six dollars.

89 Q. Yet when you made the contract, with the description that was given there, you thought the two properties were about equal in value? A. I thought so, taking the location of the property on Pennsylvania Avenue as a business location, and the value that I could add to it by the expenditure of a certain amount of money in improvements.

Q. What refreshed your memory that the first tender you made to Mr. Nichols was on the 2nd day of April, instead of the 1st? A. A receipt from Mr. Nichols of a registered letter from Mr. Smith that I was present when he wrote and went with him to the registry office——

Q. You talk about a receipt—did the receipt show all this?

Mr. SMITH: I object to the witness not being permitted to complete his answer.

Mr. BARKSDALE: I object to the answer of the witness on the ground that it is not responsive to my question, and move to strike it out.

Mr. SMITH: Go ahead, Mr. Bealmear.

WITNESS: The date of the receipt was the 2nd, the next day after the letter was mailed.

Q. Is that the only thing that has refreshed your memory about this matter since the last session of testimony? A. That and the copy of the letter itself that was written on the 1st and mailed.

Q. Is that all? A. Yes sir.

Q. Who showed you that letter and receipt? A. Mr. Smith showed me the receipt that Mr. Nichols himself had signed.

90 Q. You talked the matter over with Mr. Smith? A. Nothing excepting that Mr. Smith stated to me that Mr. Nichols had received his registered letter; that he himself had signed the receipt for it.

Q. He told you that since you last testified? A. No.

Q. What I want to know is whether you talked it over since you were on the stand? A. No, nothing except that I mentioned the fact to him to day that my memory had been refreshed by that receipt that he showed me at the time.

Q. Did you remember the date of the receipt without having seen it?

Mr. SMITH: I object to that as immaterial.

A. I have not seen the receipt today.

Q. When did you last see it? A. At the time he received it.

Q. What was the date of that receipt, according to your memory?

A. The 2nd of April.

Q. What time? A. I don't remember the exact hour.

Q. You went with him to the postoffice to send it; what time of day did you go? A. To the best of my recollection, between four and five o'clock. I was hurried to catch my train for home; I was on my way to the station.

Q. Was that after, or was it before you had been to the office of Wilson & Barksdale on that day? A. We went to your office, to the office of Messrs. Wilson & Barksdale, on the next day—the 2nd, the day that we saw Mr. Nichols and made the direct tender to him.

Q. That was the day you went with Mr. Smith? A. That was the day I went with Mr. Millan—the second day. The first day
91 I went with Mr. Smith and failed to see Mr. Nichols.

Q. Was that the same day you went with Mr. Smith to the postoffice? A. The first day, and then mailed this letter late in the evening.

Q. That all happened on the same day? A. All on the same day, we went to Mr. Nichols' office, or place of business, and failed to find him—he was not in. We came back here and Mr. Smith telephoned to the office of Messrs. Wilson & Barksdale to know if Mr. Nichols was there, and then wrote this letter notifying Mr. Nichols of our readiness to carry the matter through, and I went with him to the postoffice and saw him register it.

Q. Did you then call at the office of Wilson & Barksdale with Mr. Smith? A. I am not positive whether I did or not, but I did with Mr. Millan.

Q. How many times did you go there with Mr. Millan? A. I remember once.

Q. Do you recollect any other time? A. I can't now; I don't remember.

Q. Do you know whether or not you were there on the 7th of April, 1909? A. I may have been, but I can't remember.

Mr. MILLAN: I object to all this line of testimony on the ground that it has already been fully gone into on the former cross-examination, and on the further ground that it is irrelevant, incompetent and immaterial in view of the fact that the answer of the defendant denies the existence of a contract, and makes no point whatever as to failure to make tender, or readiness to perform within the
92 time required.

Q. Now, don't you remember that you were there at the office of Wilson & Barksdale on the 7th day of April, 1909, and made a tender to perform your part of this contract with Mr. Nichols?

Mr. SMITH: I object to that question because this witness has said that he does not remember, and it is encumbering the record with unnecessary questions.

A. I positively don't remember.

Q. Do you say you were not there? A. I can't remember being there at that time.

Q. Can you tell where you were on the 7th of April? A. I cannot, sir.

Q. I will ask you whether on the 7th day of April, 1909, you did call at the office of Wilson & Barksdale, 504 E Street, Northwest, with R. E. L. Smith, your attorney, when you did present the papers, agreeing at that time to perform your part of the contract?

Mr. MILLAN: Objected to as immaterial and irrelevant.

A. I have no recollection of it at the present time.

Q. You won't say you did not? A. I can't say it; I don't know.

Mr. BARKSDALE: That is all.

Redirect examination.

By Mr. SMITH:

Q. Were you ready on April 7th, 1909, to perform your part of this contract on behalf of Mr. J. Irving Bealmear? A. I was.

Q. Have you been ready ever since? A. I have.

Q. Are you still ready? A. Yes sir.

93 Q. Has Mr. Nichols ever intimated that he was ready? A. No sir.

Q. He has positively declined, has he not? A. Yes sir.

Mr. SMITH: Counsel for plaintiff calls upon counsel for defendant to produce at the next session for the taking of testimony in this case a letter, dated April 1st, 1909, addressed to Mr. Daniel H. Nichols, 487 Pennsylvania Avenue, Northwest, Washington, D. C., signed R. E. L. Smith, with regard to this transfer of property.

JAS. A. BEALMEAR.

Subscribed before me this 28th day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

94 Whereupon WILLIAM H. SHOLES, a witness of competent age called on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. MILLAN:

Q. Mr. Sholes, your name is William H. Sholes? A. Yes sir.

Q. You are a member of the bar of the District of Columbia?

A. I am.

Q. Look at the paper I now show you (handing the witness a paper heretofore marked for identification as Exhibit No. 1) and state whether the name W. H. Sholes purporting to be signed as a witness to the paper is in fact your signature? A. It would seem as if my signature has been rubbed there some, but I signed that paper—that is my signature.

Q. Did you place that there as a witness to the signature of Mr. Daniel H. Nichols? A. Of Mr. Daniel H. Nichols and Mr. Bealmear.

Q. Did you see Daniel H. Nichols sign that paper? A. I did.

Mr. MILLAN: I offer the paper in evidence.

NOTE.—The same is accordingly filed herewith by the Examiner, marked as above indicated, Plaintiff's Exhibit No. 1.

Mr. BARKSDALE: I object for the reason that the paper shows that there has been a material alteration, according to the testimony that has heretofore been given, and also by reason of the condition of the paper in its present form, as it shows on its face an erasure of two signatures and bears evidence of attempted despoliation.

Cross-examination.

By Mr. BARKSDALE:

Q. Mr. Sholes, you said that you witnessed the signatures of Mr. Daniel H. Nichols and Mr. Bealmear? A. Yes sir.

Q. I notice the name Bealmear appears here twice, James A. Bealmear and J. Irving Bealmear. I will ask you when you signed this paper whether or not it was in its present condition? A. No, it was not in this condition when I witnessed the signatures.

Q. What condition was it in when your signature was attached there? A. When I witnessed the paper there were six signatures on it—let me correct that; when I witnessed the paper there were four signatures on it.

Q. State what four signatures were there, if you can? A. Mr. Nichols and Mr. Bealmear below the typewritten part, and then below that there is some writing in longhand which I did myself, and then Mr. Nichols and Mr. Bealmear signed this with the four signatures on it, and I witnessed at two places the signatures of Mr. Nichols and Mr. Bealmear, and at that time there was no other witness to the paper.

Q. Was the name James A. Bealmear on there at the time that you witnessed it? A. I suppose it was—I can't now state though. If I may be permitted to state, I learned subsequently that Mr. James A. Bealmear was the father of Mr. J. Irving Bealmear, and the father signed this contract at two places after Mr. Nichols signed, and I witnessed the signature of Mr. Nichols and of Mr. Bealmear, Senior. I cannot now state positively whether the actual signature was that of the son or someone else, but the dealings were with Mr. Bealmear, Senior, and I suppose it was his signature.

Mr. MILLAN: I object to the supposition on the part of the witness.

Q. Who placed the name Bealmear in your presence and the name Nichols therein these two places? A. Mr. Bealmear, Senior, whom I afterwards understood to be the father of J. Irving Bealmear. The one who signed the paper was the Mr. Bealmear who is now

present in this room, and is the gentleman with whom I had some talk before the contract was signed.

Q. Did Mr. D. H. Nichols request Mr. James A. Bealmear to witness that paper? A. He did not.

Q. And Mr. James A. Bealmear did not witness that paper? A. He did not witness it at the time it was executed by Mr. Nichols.

Q. And at the time the other signature was attached to it——

A. (Interrupting.) I know nothing of any other signature, or any alteration, or anything of that sort. The paper as executed was in a perfect condition, and signed by Mr. Daniel H. Nichols and by Mr. B-almeear, Senior, and witnessed by myself.

97 Q. And at the time you witnessed it, did the paper bear any evidence of any alteration or erasure? A. It not only bore no evidence of it, but there was none. They were the original signatures, because the paper was absolutely clean without any signatures until the signatures were all made—that is, these signatures were all made at one time at Mr. Nichols' place of business.

Redirect examination.

By Mr. MILLAN:

Q. Mr. Sholes, I meant to ask you in my former question as to the name W. H. Sholes in two places on that paper, and I now amend my question to that extent. Did you write the name W. H. Sholes in each place where it appears on this paper? A. I did.

Recross examination.

By Mr. BARKSDALE:

Q. And witnessed it at the request of Mr. Nichols and Mr. James A. Bealmear? A. At the request of Mr. Nichols and Mr. Bealmear, Senior.

Q. The gentleman who is now in this room? A. Yes.

Redirect examination.

By Mr. MILLAN:

Q. Mr. Sholes, I understood you to say on cross-examination that while the signature originally attached to this paper below the signature of Mr. Nichols, in two places, as the paper was originally executed, was actually written by the hand of Mr. James A. Bealmear now present, in your presence, you do not recollect
98 whether he wrote his own name or the name J. Irving Bealmear? A. I don't recollect, because I don't think I noticed. He simply signed it. The whole deal was with Mr. Bealmear, Senior, and I naturally supposed it was his signature.

Q. You do not recollect? A. I do not recollect.

Q. Did you examine these papers before they were signed? A. Yes.

Q. You were acting for Mr. Nichols in the matter? A. I was.

Q. Look at the top of this paper—the first paragraph. (Handing paper to witness.) I call your attention to the fact that the paper

purports to be an agreement between J. I. Bealmear and Daniel H. Nichols, and ask you if that in any way refreshes your recollection as to the form of signature which was appended to the paper when it was first executed? A. It does not, because I dealt with Mr. Bealmear, Senior, the father, as being the party of the second part of this paper.

Q. Would you, as an attorney, have allowed a paper to be signed, and have accepted it signed in the name of James A. Bealmear, when in the top of the contract it purported to be made on behalf of J. I. Bealmear?

Mr. BARKSDALE: I object to that as not being proper—what he would have done or would not have done certainly would not affect the facts of this case, because the question is here what was done.

99 A. Answering your question, Mr. Millan, it was, as I now recollect it, that very fact that subsequently led me to give the paper to Mr. Bealmear to have his son sign it. When I discovered that we were not dealing with the father, but the contract was made with the son and the father had signed it.

Q. Then it is a fact that you discovered that the title to the property was in the son and not in the man who had actually signed the paper? A. Mr. Bealmear, Senior, so told me.

Q. And you then told him, as I understood——

Mr. BARKSDALE (interrupting): I object to the examination of this witness by such leading questions as not proper on redirect, but if they want to call this witness to testify for any other purpose, then all right.

Q. You stated that you gave the paper back to Mr. Bealmear, Senior—Mr. James A. Bealmear; for what purpose did you give it back to him? A. To have his son sign it.

Q. By his son, you mean J. Irving Bealmear? A. If that is his son's name.

Q. Had it already been signed by the hand of the father, James A. Bealmear, when you gave it back to him? A. It had; yes sir.

Q. What, if anything, was to be done about the signature that James A. Bealmear had already placed there? A. Nothing was said about that.

Q. The understanding was, if I understand you—you will correct me if I do not—that it was to be taken to Baltimore and signed by the son?

Mr. BARKSDALE: Let us see what the witness says about that. Don't lead your witness, Mr. Millan.

A. The circumstances under which this occurred were these:
100 After this paper was signed by Mr. Nichols and Mr. Bealmear, Senior, at Mr. Nichols' place of business, Mr. Bealmear and I left there together for the purpose of going to the Columbia Title Insurance Company to run down the title. After we had left Mr. Nichols' place some distance—my recollection is we had gotten on 5th Street almost to the Title Company—some question came up about getting from Mr. Bealmear his title papers in order that I might

have Mr. Nichols' end of it run down, and Mr. Bealmear, Senior, for the first time told me that he did not own the property, or that the title was in his son's name, or words to that effect; but whatever he said led me to say, "Why, you should not have signed this contract, but your son should have signed it." I then had one copy of the contract and he had the other. I then took out the copy that I had and handed it to him, and I said, "You had best have your son sign it, if he owns the property", and I gave it to him. I don't think I went into the Title Company; I think I turned and went to the office—that is my recollection.

Q. Was there any conversation as to where the son was? A. I think he told me the son was in Baltimore—the son wasn't here.

Mr. MILLAN: That is all.

Recross examination.

By Mr. BARKSDALE:

Q. When you handed the contract to Mr. Bealmear, Senior, did you tell him to erase any name, or make any erasures whatever in the contract? A. I did not.

Q. Did you tell him that when he secured his son's signature to it, that he should then witness the paper?

101 Mr. MILLAN: That is objected to as immaterial.

A. Most assuredly not.

Q. State whether or not at that time you had any authority from Mr. Nichols to turn that paper over to Mr. Bealmear for any purpose?

Mr. MILLAN: I object to that. He represented Mr. Nichols in the transaction, and whether he had specific and minute directions with reference to this particular act is immaterial. Furthermore, it calls for a conclusion of law, and while this witness may be fully qualified to give an opinion upon any question of law, as a witness he is not competent.

A. I did not have any authority from Mr. Nichols to turn the paper over. I acted on my own volition.

Q. The contract between Mr. Bealmear and Mr. Nichols had been signed and the papers delivered at the hotel before you left there, had they not? A. The matter was closed and each had taken his copy. Mr. Nichols gave me his copy for the purpose of examining the title to the property he was to have, in order to get a description of the property.

Q. He did not authorize you to do anything further about the contract in any way, did he? A. He did not.

Q. Have you ever met Mr. J. Irving Bealmear? A. By Mr. J. Irving Bealmear, you mean the son?

Q. Yes? A. I never have.

Q. Mr. James A. Bealmear, Senior, is the only Bealmear you know or ever have met? A. Mr. Bealmear, Senior, is the only one I ever met, and is the gentleman with whom the entire

102 transaction was conducted; I supposed he owned the property.

Q. And the time when you and he had left the hotel and were on 5th Street is the first time that you knew that Mr. James A. Bealmear's son owned the property? A. Yes sir.

Q. Nothing had been said about it by him during the negotiations between him and Mr. Nichols at the hotel? A. Not in my presence.

Redirect examination.

By Mr. MILLAN:

Q. Mr. Sholes, Mr. Barksdale asked you if you requested Mr. James A. Bealmear to witness the signature of J. Irving Bealmear at the time you gave the paper back to him to take to Baltimore to be signed, and you said you did not. Did you tell him not to have it witnessed? A. I said nothing about it one way or the other.

Q. You did tell him to take it to Baltimore and have it signed? A. I said nothing about taking it to Baltimore. I said, "You had best have your son sign it, because we have a contract with you and your son owns the property." Nothing was said about the method of doing it, or anything about it. I simply handed it to him and told him to have his son sign it.

Q. Had your attorneyship for an- representation of Mr. Nichols ceased when you left the hotel with these papers signed? A. I did not so consider it. I had represented Mr. Nichols in various transactions for a number of years.

Q. Had it ceased at the time you handed this paper back to Mr. Bealmear? A. I had not come to collecting my fees, no sir.
103 I had represented Mr. Nichols for a number of years, but not under any arrangement for an annual retainer or fee of that sort; simply as he would want some matter attended to he would call on me, and in this connection I was looking after his interests. I did not consider, so far as that went, that my relations with him ended when the contract was signed.

Recross-examination.

By Mr. BARKSDALE:

Q. Mr. Sholes, so far as Mr. Nichols was concerned, your connection with this particular contract had terminated and ceased when it was executed and delivered at the hotel, had it not? A. As far as that contract; yes.

Mr. MILLAN: We object to that as a question of law to be determined by the Court from all the evidence of the transaction, and move to strike the answer out.

Q. Mr. Sholes, Mr. James A. Bealmear has testified in this case as follows:

WITNESS (interrupting): Mr. Barksdale, if I might be permitted, it is only proper for me to say that Mr. Nichols asked me to look into the legality, binding effect, etc., of the contract to be brought to him by Mr. Bealmear. I did not prepare this contract; it was brought down to Mr. Nichols' place of business by Mr. Bealmear. I

read it over and advised Mr. Nichols about it, and then after several conferences between Mr. Bealmear, Mr. Nichols and myself acting as intermediary, it culminated in the signing of that agreement, and after that my only connection with the case was simply to look after the title to the property.

104 Mr. MILLAN: We object to the answer of the witness and move to strike it out because the question of the limitation of his agency is one for the determination of the Court from all the evidence and circumstances, and further, because the agent is not competent to prove the extent of his agency by his own testimony.

Q. Mr. James A. Bealmear has testified that after you and he left the hotel—Mr. Nichols' place of business—and were going to the Title Company, that you handed him, Mr. Bealmear, this contract, and said, "I think it is best for you to take this home with you and erase your son's name there and let him sign himself, as it may save some dispute hereafter." I will ask you whether or not you said anything of that kind, Mr. Sholes?

Mr. MILLAN: I object to this as not proper re-cross-examination. Counsel for the defendant has already had this witness twice on cross-examination, and the present question is not responsive to any new matter brought out in the last examination on the part of the plaintiff; and counsel for the defendant now for the first times takes up a copy of the testimony of the witness Bealmear and embarks upon a new line of examination.

Mr. BARKSDALE: This is a matter that counsel had overlooked, and if it is not responsive and Mr. Millan's objection is well taken, I ask the privilege of asking these questions on the ground that the matter has been overlooked.

A. I did not tell Mr. Bealmear to have his son or himself erase anything. I handed Mr. Bealmear the copy that I had and said he had best have his son sign it, but there was nothing said as to how it should be signed, or under what conditions, or how
105 witnessed, or witnessed at all. In fact I was the only witness.

Q. Mr. Bealmear further testifies as follows: Q. Did he (referring to Mr. Sholes) request you to erase your son's signature?
A. Yes.

Mr. MILLAN: Same objection.

Q. (Continued.) I ask you whether or not that is true?

Mr. MILLAN: Same objection.

A. It is not.

Q. He further testifies that you told him to erase the name of his son that he had attached to this contract, "and have your son sign it," and for him to witness his signature; is that true?

Mr. MILLAN: I object to that on the ground last above stated, and for the further reason that it is a needless repetition of a matter that the witness has already testified with respect to.

A. No.

Redirect examination.

By Mr. MILLAN:

Q. Mr. Barksdale asked you about the matter of your authority when you left the hotel with these papers signed. That makes it necessary for me to ask you what instructions or directions Mr. Nichols gave you then, if any, with reference to the further conduct of the transaction? A. Simply to see to the title to Mr. Bealmear's property.

Q. Is that all he said to you? A. Yes, I think that is all he said.

Q. Did he say anything to you at all about the contract, and if so, what? A. No, I don't remember that he said anything
106 about it; he simply signed it and Mr. Bealmear signed it, and I witnessed it, and I don't think I had any private conversation with Mr. Nichols.

Q. It all took place in the presence of Mr. Bealmear? A. Yes. I don't think I had any private conversation with Mr. Nichols out of the presence of Mr. Bealmear before I left there.

Q. You had the paper when you left there? A. Yes, I gave it to Mr. Nichols first, and he gave it to me in order to find out about the title.

Q. Mr. Nichols gave it back to you? A. That is my recollection now.

Q. For what purpose? A. In order that I might have it to look up—to know which property it was—Mr. Bealmear's property. The contract was complete, and the next thing, of course, was to ascertain whether Mr. Bealmear had a good title to his property, and he had volunteered to let me have his certificate of title, and I took the contract for the purpose of seeing whether the property—I took one copy of the contract in order to have the description of the property, and for the purpose of seeing whether the description of the property corresponded with the contract. That is about my recollection of why I took the contract.

Q. Did you have any further conferences with Mr. Nichols about this matter, after the day that you spoke of?

Mr. BARKSDALE: I object to that because it is neither material nor relevant, and certainly is not responsive to any questions that have been asked by counsel for defendant.

Mr. MILLAN: I make the same observation with refer-
107 ence to matter overlooked as before made by counsel for defendant, and request the same privilege requested by him.

Mr. BARKSDALE: Of course I have no objection to counsel recalling this witness for any matter that he had overlooked, but I do not waive my objection to the relevancy of this testimony.

A. Refreshing my recollection as to any subsequent interview with Mr. Nichols, my best recollection now is that I did not; that Mr. Bealmear brought me back to my office a contract with the name of his son on it, but I did not take that contract to Mr. Nichols, nor did I tell him anything about that change in the name; and

I can't think exactly when it occurred, but somewhere along there Mr. Barksdale, I think, came in and said he represented Mr. Nichols and wanted the contract.

Q. Did you have any further negotiations with Mr. Bealmear after he brought you this contract, with reference to the carrying out of its terms? A. I think Mr. Bealmear was in to see me two or three times. Now, I may have seen Mr. Nichols subsequent to that time and between the time that the contract was signed and the time that it was turned over to Mr. Barksdale, but I am positive that I did not tell Mr. Nichols about the change in the condition of the signatures.

Q. What did you see him about? You may state whether or not it was with reference to this transaction?

108 Mr. BARKSDALE: My objection to the materiality and the the relevancy of this testimony applies to all these questions without repetition to each one, and to this line of examination.

A. I had some other matters for Mr. Nichols, and whether it was on these other matters, or whether it was about this I am not perfectly clear, but my impression, if I may use that expression, or my faint recollection is that I did see him about Mr. Bealmear's title to this property before the contract was turned over to Mr. Barksdale.

Q. Do you know when it was turned over to Mr. Barksdale? A. That I can't remember.

Q. Do you know whether it was before or after the 1st of April, 1909? A. I am unable to state and have no way of refreshing my recollection, and I will add that I may be mistaken as to turning it over to Mr. Barksdale, but I turned it over either to Mr. Barksdale or to someone from his office.

Q. Mr. Sholes, you know Mr. Smith of this firm, of course? A. I do.

Q. Do you remember to have had an interview or interviews with him at your own office with reference to this matter, during the month of March, 1909? A. I cannot recollect whether it was in March. I had interviews with Mr. Smith, Mr. Millan and Mr. Barksdale at different times about it, and I can't remember distinctly the dates now.

Q. I don't ask you about any interviews with myself or Mr. Barksdale. Do you remember whether in those interviews
109 with Mr. Smith you made any statements with reference to Mr. Nichols' disposition towards carrying out the contract?

Mr. BARKSDALE: I object. At this time it is not shown that this witness had any authority whatever to bind Mr. Nichols, or act for him or on his behalf; and further, the conversation was not in the presence of Mr. Nichols, if it took place at all.

A. If I was Mr. Nichols' attorney at that time, it was a privileged communication that I had no right to disclose, if I did disclose anything to Mr. Smith.

Q. I am not asking you now as to the statements you may or may

not have made to Mr. Smith. The question which I asked is as to whether you made a statement to Mr. Smith?

Mr. BARKSDALE: I object to that question unless it is confined to some particular matter that is relevant and material to the issues that are to be determined here in this cause.

A. Mr. Smith and I talked the matter over; I talked to Mr. Smith unreservedly. I know Mr. Smith perfectly well and had the utmost confidence in him, and I discussed the matter unreservedly with Mr. Smith. Just what I said I don't know now.

Q. I haven't asked you what you said; I asked *him* if you had conversations with him in reference to this matter? A. I had.

Q. Did you in these interviews with Mr. Smith make any statements to him with reference to Mr. Nichols' attitude in carrying out this contract?

Mr. BARKSDALE: I object for the reasons heretofore stated.

A. I am not sure I did.

110 Q. Will you say you did not? A. I don't say I did not, nor would I say that I did, because I don't remember.

Q. Does this refresh your recollection as to whether you had any interviews with Mr. Nichols after the signing of the contract on the 2nd day of March, and before Mr. Barksdale, or someone from his office, got it from your possession? A. My best recollection about that now is that there was no question about it until subsequent to the contract passing out of my hands. It seems to me that my conversations with Mr. Smith all took place subsequent to turning the contract over to Mr. Barksdale, and yet I am not positive about it.

Q. Now, for the purpose of refreshing the recollection of this witness, I ask a further leading question; making that my excuse for so doing. Mr. Sholes, isn't it a fact that after the second of March and prior to the first of April, that you had repeated interviews with Mr. James A. Bealmear, in which you discussed with him this transaction and points raised by Mr. Nichols with reference to it? A. That does refresh my recollection, and it brings back to me now the fact that I did have a talk with Mr. Nichols. I talked with Mr. Bealmear before the contract went into Mr. Barksdale's hands.

Q. Now, without asking you to disclose any confidential communication between yourself and your client Mr. Nichols, I ask you to state as a fact whether you were still representing him in this transaction after you delivered the contract to Mr. Bealmear to be signed by his son, as you stated. A. I so considered myself.

111 Recross-examination.

By Mr. BARKSDALE:

Q. After the contract was executed and delivered at the place of business of Mr. Nichols, I believe you said it was turned over to Mr. Nichols? A. That is my recollection.

Q. And then Mr. Nichols turned the contract over to you, directing you to have the title of Mr. Bealmear's property looked into? A. That is right.

Q. And you took the contract, and had it in your possession at the time you turned it over to Mr. James A. Bealmear merely for the purpose of getting a proper description of the Bealmear property?

A. Yes.

Q. Did you at any time tell Mr. Nichols that that contract had been changed in any way as the evidence here shows it was? A. I did not.

Mr. BARKSDALE: That is all.

W. H. SHOLES.

Subscribed before me this 24 day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

NOTE.—It is stipulated and agreed by and between counsel for all parties that the paper which has been offered in evidence as Exhibit No. 1 was recorded in the office of the Recorder of Deeds of the District of Columbia on the 18th day of March, A. D. 1909, and recorded in Liber No. 3196, folio 421, et seq., of the Land
112 Records of said District, but this stipulation is not intended to cover or embrace any admission on the part of counsel for the defendant other than the mere fact of recordation.

Examiner in Chancery.

At this point an adjournment was taken until Friday, January 21, 1910, at 2 o'clock P. M.

Examiner in Chancery.

113 WASHINGTON, D. C., *January 21, 1910.*
Friday, at 2 P. M.

Met, pursuant to adjournment.

Present:

Messrs. Millan & Smith, Attorneys for Plaintiff;
Noel W. Barksdale, Esq., of counsel for Defendants;
Also the Witnesses, and the Examiner.

Whereupon WILLIAM H. GERMANN, a witness of competent age, called on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. MILLAN:

Q. Mr. Germann, what is your business? A. Building and real estate.

Q. How long have you been engaged in that business? A. Well, in Washington since 1881.

Q. Are you familiar with the values of real estate generally in the District of Columbia? A. Yes sir.

Q. Are you acquainted with the property known as lots 18 to 27, both inclusive, in J. Irving Bealmear's subdivision of Square North of Square 1053, in the City of Washinton, District of Columbia, improved by houses known and numbered as 519 to 537, both inclusive, Tennessee Avenue, embracing each odd number between these numbers? A. I am familiar with those houses on that block of ground. Whether they are the numbers I don't know

Q. The houses that are known as the Bealmear houses?
114 A. Known as the Bealmear houses; yes sir.

Q. What in your opinion is the value of those houses? A. A conservative valuation of those properties in my opinion is \$3750.

Q. For each house and lot? A. Yes sir.

Q. Are you familiar with the property known as part of original lot 5, in square 491, improved by premises 487 Pennsylvania Avenue, Northwest, in this City? A. If it is the property, Mr. Millan, on the west side of the alley, I am. I boarded at 485 for three years when I first came here.

Q. It is shown from the testimony here that that lot is about 27 feet front on Pennsylvania Avenue—twenty-seven feet, two-and-three-quarters inches, by a depth of 132 feet, four-and-one-fourth inches. What in your opinion is the value of that property? A. My opinion of the value of that property is, \$7.50 a foot.

Q. According to these dimensions, that would be about thirty-six hundred square feet, and your estimate of its value then would be what? A. Would be \$7.50 a foot.

Q. Do you include in that building, or not? A. I do not, no. I don't think, in my opinion, the building is worthy of practical consideration so far as value is concerned; it is a very old building.

Q. What would you place as the total value of the ground and building? A. Seven dollars and a half a foot is my valuation of the value of that property.

115 Q. Now, Mr. Germann, assuming that a contract has been made for the exchange of these two properties, and that the Tennessee Avenue houses were at the time the contract was made subject to an encumbrance of twenty-two thousand dollars, and the Pennsylvania Avenue property to an encumbrance of seventeen thousand five hundred dollars, that the exchange was to be an even exchange except that the owner of the Tennessee Avenue property was to get five hundred dollars difference in cash, what would you say as to whether that was a fair and equitable trade, or otherwise, from the standpoint of the owner of the Pennsylvania Avenue property? A. I should consider he was getting a good deal, myself.

Cross-examination.

By Mr. BARKSDALE:

Q. Mr. Germann, what do you consider that property—the Tennessee Avenue property, is worth per foot, exclusive of improvements? A. About fifty cents a foot.

Q. Do you know the size of the lots? A. Yes, I have seen a subdivision of it. I had occasion at one time previous to this transaction to make a proposition to Mr. Bealmear.

Q. What is the size of the lots? A. They are sixteen by eighty, if I remember correctly. Some of them I think vary in depth.

Q. Do you know what the dimensions of them are? A. No, I could not tell you that without the plat; I could not carry that in my head, of course.

Q. What do you consider the improvements on each lot
116 worth? A. Well, I am satisfied that I couldn't build the houses for less than about twenty-seven or eight hundred dollars.

Q. Do you know what they cost? A. I do not.

Q. Do you know when they were built? A. I know about when they were built—some two or three years ago.

Q. Do you know what rent they bring? A. Not except from hearsay.

Q. On what do you base your opinion as to value? A. On the value of the ground and the cost of the construction of the houses.

Q. If you don't know what the cost was, how can you make it a basis for your opinion? A. Being a practical builder, I know that I would not like to build the houses for less than that amount of money.

Q. It is not a question of what you would like to do, Mr. Germann, but of the value of the property. A. I have given you my estimate of the value of the property.

Q. When did you see the houses? A. I saw them last about six months ago, I think.

Q. Did you go in them? A. Yes sir.

Q. All of them? A. No sir.

Q. How many of them? A. I went into three of them, I think; they are all alike—they appeared to be so, at least, from the exterior.

117 Q. Now, for what purpose were you making that examination? A. For the purpose of an exchange previous to this transaction here.

Q. An exchange for some property that you owned? A. No sir, some property I was dealing for.

Q. Did you make an estimate of the value of the property at that time for your client? A. Yes sir, practically on the same lines I am testifying now.

Q. Who was your client?

Mr. MILLAN: I object to that as not material.

WITNESS: I don't think I would like to state who my client was; I might state who the agent was that I was dealing with.

Q. What estimate of the valuation of that property did you make at that time? A. Practically the same that I have just stated, but that was not the basis upon which the transaction was based, because that was higher still. We dealt on a basis of four thousand dollars.

Q. Have you bought or sold any property in the vicinity of these Tennessee Avenue houses recently? A. No sir, not very recently.

Q. Are you acquainted with values out there? A. Somewhat.

Q. To what extent? A. I have just been trying to make a deal for a square directly south of that.

Q. Any other negotiations for property in that vicinity within the last twelve or eighteen months? A. Yes; another property at the corner of Tennessee Avenue—at least at the intersection of Tennessee Avenue and 15th Street.

Q. How close to this property? A. Very close; within a block.

Q. Did you perfect the deal? A. No, it fell through because they refused the price.

Q. Taking these lots from the dimensions you have given, sixteen by eighty feet, makes 1280 feet, which you estimate at fifty cents, or a total of \$640. Added to the price of the houses, at twenty-eight hundred, it makes \$3440. You have given your estimate that the houses were worth \$3750; can you account for the discrepancy? A. Sure; I certainly would not like to enter into a contract to build a house and sell it for the bare cost of it. I am sure that a builder or an investor would be entitled to a profit of five or six hundred dollars on a house.

Q. Do you know what those houses cost to build? A. No sir, I haven't any means of knowing that.

Q. Have you been through 487 Pennsylvania Avenue? A. No sir.

Q. Have you ever been in the hotel? A. I have been in it some years ago; not recently.

Q. How long ago? A. Probably ten or fifteen years ago.

Q. Do you know what the improvements on that property are worth? A. I should not consider them worth anything in connection with the valuation of the property as I have given it myself. In other words, if I was to buy the property, I would not value the improvements that stand on the lot for anything.

Q. So your estimate of seven dollars and a half a foot is just for the bare property itself? A. Yes sir.

Q. Have you in any way represented Mr. James A. Bealmear in real estate matters here? A. No sir; I have attempted to do it.

Q. Are you representing him now? A. No sir.

Q. Are you his agent in any way for the collection of rents on that property? A. No sir.

Q. Are you related to him in any way? A. No sir, not at all.

Q. At whose instance did you come down here to testify? A. Mr. Bealmear's—James A. Bealmear. I have known Mr. Bealmear for many years, but I have never succeeded in making any transactions with him.

Mr. BARKSDALE: That is all.

WILLIAM H. GERMANN.

Subscribed before me this 24th day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

Mr. BARKSDALE: At the end of the last session counsel for plaintiff called upon the defendants to produce a certain letter described therein. In response to said call counsel for defendant D. H. Nichols says that said letter cannot be located after diligent search.

120 Whereupon DANIEL H. NICHOLS, defendant hereto, and a witness of competent age called on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SMITH:

Q. Mr. Nichols, your name is Daniel H. Nichols? A. Yes sir.

Q. And you are one of the defendants in this case? A. Yes sir.

Q. You filed an answer in this case, I believe, Mr. Nichols, through your counsel? A. Yes sir.

Q. You admit in your answer, Mr. Nichols, that two judgments, one for \$1675, and one for \$584.16, were obtained against you by the parties named in the bill, namely, William A. Joline and Frank O. Nichols. Will you tell me, please sir, when the debts which are the basis of those judgments accrued? A. Well, the Joline was about a year ago last New Year's—somewheres about that time—a year ago last Winter sometime. There were four hundred dollars obtained, and I gave two notes of fifty dollars each, and besides that I was to give two two hundred dollar notes Somewheres about a year ago last January.

Q. How about the Frank O. Nichols debt? A. That has been standing for a number of years, part of it is wages.

Q. When did the wages accrue, Mr. Nichols? A. The book will tell; I couldn't tell you. They had been running up to that
121 time.

Q. Up to that time? A. Yes sir.

Q. Up to the time the judgment was obtained? A. Yes sir.

Q. Mr. Frank O. Nichols is your brother, isn't he? A. Yes sir.

DANIEL H. NICHOLS.

Subscribed before me this 25th day of March, 1910.

P. H. MARSHALL, *Examiner*.

Mr. SMITH: I offer in evidence short copies of judgments in Law Causes 51517 and 51518, entitled Frank O. Nichols vs. Daniel H. Nichols, and William A. Joline vs. Daniel H. Nichols respectively.

NOTE.—The same are accordingly filed herewith by the Examiner, marked Plaintiff's Exhibits Nos. 7 and 8.

Mr. SMITH: Notice having been given at the last session to produce a certain letter, and counsel for defendant having at this session announced his inability to produce it, we now offer in evidence a letter-press copy of the same, found on page 454 of the letter-press book No. 29, of the firm of Millan & Smith, and it is stipulated and agreed between counsel that this copy may be copied into

the record by the Examiner, to have the same effect as if the book itself were produced in Court.

Mr. BARKSDALE: While no objection is made to the form of this evidence, yet objection is made to the materiality and relevancy of this letter, and particularly as proof of the statements
122 which it contains.

Copy of Letter Referred to.

“APRIL 1, 1909.

Mr. Daniel H. Nichols, 487 Penn. Ave. N. W., Washington, D. C.

DEAR SIR: Representing Mr. J. Irving Bealmear, I called at your place of business to-day to tender performance on Mr. Bealmear's part and demand performance on your part of the agreement to exchange properties, entered into between you and Mr. Bealmear, according to contract signed by you and him on the second day of March, 1909. We have prepared all deeds and other papers necessary to close the deal and I had them with me. You were said by some one who seemed to be in authority to be absent, at the office of Wilson and Barksdale, attorneys. I could not, therefore, tender to you the deeds and other papers, all of which have been signed by Mr. Bealmear, so far as his signature is required, and demand of you a deed to the Pennsylvania Avenue property, &c., which you are under contract to convey. You are now called upon to comply forthwith with the contract referred to and advised that in case you decline such action will be brought to enforce Mr. Bealmear's rights as he may be advised is proper. Mr. Bealmear is ready to fully comply upon his part, and the writer will make another effort to see you this afternoon, it being now 3.50 P. M. o'clock, to assure you that Mr. Bealmear is ready.

Yours truly,

R. E. L. SMITH.”

123 Whereupon WILLIAM W. MILLAN, a witness of competent age called on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

My name is William W. Millan, and I am a member of the bar of this District and one of the counsel for the plaintiff in this case.

On the 2nd day of April, 1909, I went in company with Mr. James A. Bealmear to the premises 487 Pennsylvania Avenue, Northwest, in this City, and there met for the first and only time the gentleman whom I now recognize as Mr. Daniel H. Nichols, now present, who said in response to our inquiry that he was Mr. Nichols; and we then and there presented to him the various papers which have been offered in evidence here, consisting of deed, deed of trust, lease and promissory notes, telling Mr. Nichols that Mr. Bealmear was ready to carry out the transaction—referring to the exchange of properties which has been testified about here, tendered him a deed to the Bealmear houses, demanded that he execute the deed to the Pennsylvania Avenue property, told him I was a notary public and could take his acknowledgment to the same.

Mr. Nichols at first declined to give any positive answer, but repeatedly said that he would say nothing but referred us to his attorneys, Messrs. Wilson & Barksdale, but after much pressing for a distinct answer as to whether he would or would not sign the papers and carry out the transaction, he said he would not, and that we could see his attorneys, Messrs. Wilson & Barksdale.

124 Mr. SMITH: You said you tendered him a deed; do you remember whether you tendered him one or more deeds? Did you not tender him a deed for his signature?

A. That is what I said. We tendered him an executed deed to the Bealmear houses, a deed which was offered in evidence here, and a deed for his property to Mr. Bealmear, to which we demanded his signature, advising him that I was a notary public and could take his acknowledgment, and all the other papers which have been identified by Mr. Bealmear and offered in evidence here, as having been presented on that occasion, which papers I had assisted in the preparation of.

Cross-examination.

By Mr. BARKSDALE:

Q. Mr. Millan, how do you fix the date as the 2nd of April when you made that visit? A. It was the date after a letter was written, about which there has been some testimony here, which date was fixed in my memory at that time in that way.

Q. Did you have anything to do with the writing of the letter? A. I knew of the fact that it was written, and conferred with my partner, or rather he conferred with me, as to the phraseology of the letter.

Q. Did you see the letter after it was written? A. I did.

Q. Do you recollect that that was on the first day of April? A. I do.

Q. Did you with Mr. Bealmear call at the office of Wilson
125 & Barksdale at any other time? A. I have not yet said that we called at the office of Wilson & Barksdale at all. We did call there.

Q. Did you call at the office of Wilson & Barksdale the same day that you talked with Mr. Nichols? A. My recollection is we did not. I am aware that Mr. Bealmear has said we called on that day. I will not say we did not, but it is not my recollection that we did.

Q. When did you call at the office of Wilson & Barksdale with Mr. Bealmear? A. My recollection is that it was a day or two later.

Q. Would you say whether it was one or two days, or more? A. Well, my recollection is not clear as to that, but my best impression is that it was as much as two days later, and probably not more than two days. I did not fix that date in my mind, but I did fix the date of the other interview, which I considered an important item in the case.

Q. But you know that you did not call at the office of Wilson

& Barksdale the day you made the tender to Mr. Nichols? A. I have not so stated. I said my impression is I did not.

Q. I will ask you whether you did or not? A. If we called on that day, I do not now recollect it. I recollect a call, but I am not able to fix the date other than to say that my best recollection is that it was not on the 2nd day of April, but one or two days later.

Q. You did not call on Mr. Nichols but once? A. Only
126 once.

Q. And you did not call at the office of Wilson & Barksdale in connection with this matter but once? A. My recollection is, only once, but I will not say I did not call twice.

Q. But when you did call, it was in the company of Mr. J. A. Bealmear? A. Yes sir.

Mr. BARKSDALE: That is all.

WM. W. MILLAN.

Subscribed before me this 24 day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

127 Whereupon, JAMES A. BEALMEAR, a witness previously sworn and examined herein, resumed the stand for further examination, and testified as follows:

Cross-examination.

By Mr. BARKSDALE:

Q. Mr. Bealmear, on the 1st of March were you a married man and living with your wife? A. Yes sir.

Q. And you have been since that time? A. Yes sir.

JAS. A. BEALMEAR.

Subscribed before me this 28th day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

NOTE.—At this point an adjournment was taken until Friday, January 28, 1910, at 2 o'clock, P. M., at the office of Wilson & Barksdale, No. 504 E Street, Northwest, Washington, D. C.

P. H. MARSHALL,
Examiner in Chancery.

128 WASHINGTON, D. C., *January 28, 1910,*
Friday, at 2 o'clock p. m.

Met, pursuant to adjournment.

Present:

Messrs. Millan & Smith, Attorneys for Plaintiff;
Noel W. Barksdale, Esq., of counsel for Defendants;
Also the Witnesses and the Examiner.

Whereupon, AARON R. TOWNSHEND, a witness of competent age called on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. SMITH:

Q. Mr. Townshend, have you had any experience in Washington in buying and selling property and building? A. Yes sir.

Q. State what experience you have had? A. I have built quite a number of houses in different sections of the Northeast, Southeast and Northwest.

Q. Will you state about how many houses you have built? A. Probably about fifty.

Q. How recently, Mr. Townshend, have you been engaged in this? A. Just recently. Right about now I am just finishing a building proposition.

Q. Are you familiar with the property on Tennessee Avenue, Northeast, known as 519 to 537 Tennessee Avenue? A. I don't know them by the numbers, but the property is between E and F, 14th and 15th, facing on Tennessee Avenue in that block there.

Q. Are you familiar with the property? A. Yes sir, I am familiar with the property and that location around there.

Q. Are you familiar with the values of real estate in that locality? A. Yes sir, I am familiar with values around in that section.

Q. When did you last see these houses, Mr. Townshend? A. The last I saw of them was yesterday. I have been down there before, but yesterday was the last time.

Q. What would you say is the value of those houses as they stand now, including the land? A. Those houses of Mr. Bealmear's are a class of houses that it would take about twenty-five hundred to build, and the value of the ground along in there, I estimate that any lot along in there from sixteen to eighteen feet front, running back about seventy-five feet, is worth about eight hundred dollars.

Q. That would make the actual building cost and the value of the lot about thirty-three hundred dollars? A. Yes sir. Now a builder—any man in building, if he owned the ground or had got a building loan, would want for his risk—a builder usually gets from four to five hundred dollars out of a house of that kind, and that would make the houses stand—I would hold them for about thirty-six or thirty-six hundred and fifty dollars. I would really try to get more than that for them, if I could, but that is about what I would come down to for a cash sale.

Cross-examination.

By Mr. BARKSDALE:

130 Q. What is that property worth per foot, Mr. Townshend, in your opinion? A. Well, it is hard to say. Four or five years ago I paid sixty cents a foot for property at 13th and 9—2206A

D, and this locality is a better neighborhood. In my opinion I should say it was worth about sixty-five or seventy cents.

Q. Do you know the size of the lots? A. No sir, I don't know by actual feet. I imagine the lots run back about seventy feet.

Q. Do you know what the width is? A. The width, I should say, is about sixteen or seventeen feet, running back seventy feet. I just take it as a lot in that locality—a lot of that size I could see there. I just took it from what I could see.

Q. What is the basis of your valuation of the houses at twenty-five hundred dollars to build? A. I have built houses of that type and class, and twenty-five hundred is about the figure that it cost to get them up—six room houses and cellar.

Q. You think that is what it would cost for labor and materials to put up that house? A. I think so; yes sir. Of course it varies at different times, but they are what I would call twenty-five hundred dollar houses.

Q. How many of those houses have you been inside of? A. Only one.

Q. Which one was that? A. That was the one that Dr. Roberts lived in; I think the number was 525, I don't know.

Q. When were you in there? A. It has been several months ago; I don't remember just when it was—sometime last Spring.

Q. About a year ago? A. Yes sir. I went down there
131 to look at that property. I didn't know who owned it, but I was considering it in a trade for some other property, and I went out to look the field over, and I looked it over pretty closely at that time.

Q. What value did you place on it then? A. I don't remember now what that was—I couldn't tell you. I don't remember anything about it except that it was the same property. I was favorably impressed with it at the time, I remember that.

Q. You say you saw these houses yesterday, do you mean you went in them yesterday? A. No sir, I didn't go in them yesterday.

Q. And you hav-n't been in them since a year ago? A. I haven't been in them since a year ago; yes sir.

Q. And then you were only in one of them? A. Yes sir; I went in it last Spring some time.

Q. You are not a real estate dealer, Mr. Townshend? A. No sir, I am an examiner in the Patent Office, but I have built quite a number of houses of that class.

Q. Did you build them for yourself or for some one else? A. No sir, for myself.

Q. You are not a contractor and builder by profession, then? A. No sir.

Q. What position do you hold in the Patent Office? A. I am a first assistant examiner.

Q. Have you built any houses in this immediate vicinity? A. No, the nearest I have built in that vicinity is 13th and D.

132 Q. How far is that from this property? A. Well, it is about two squares southwest of this property.

Q. Have you bought or sold any property in this immediate

vicinity? A. I have sold what I have built in that vicinity—those at 13th and D.

Q. How many houses did you build there? A. Nine.

Q. What did you sell them for? A. I sold them for various prices, from thirty-five hundred and fifty to five thousand dollars.

Q. Are all these lots the same width and depth—the Bealmear property? A. I couldn't tell.

Mr. SMITH: I object to that because the records show it.

Q. Are the houses all alike so far as you know? A. I have not been in them all. Externally they look to be about the same size houses, from the exterior.

Q. When you said you saw them yesterday, you meant you just saw them casually as you passed by? A. That is all, yes sir; I just passed around and looked at them.

Mr. BARKSDALE: That is all.

Mr. SMITH: That closes our case in chief.

AARON R. TOWNSHEND.

Subscribed before me this 26 day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

133

COMPLAINANT'S EXHIBIT No. 1.

This agreement made this second day of March, A. D. 1909, between D. H. Nichols, of Washington, D. C., of the first part, and J. I. Bealmear, of Baltimore City, in the State of Maryland, of the second part.

Witnesseth that the said party of the first part in consideration of one dollar and the further consideration of the conveyance to him of certain real estate equities as hereinafter recited; do- hereby agree to sell and convey unto the said party of the second part all of that lot and improvements on Pennsylvania Avenue, in the City of Washington, D. C., and designated as No. 487 Pennsylvania Avenue (fronting on Pennsylvania Avenue 27? feet, with even depth of 140 feet) and known as the Mt. Vernon Hotel; the said property being subject to a first deed of trust to secure the payment of the sum of fifteen thousand dollars (and interest at five per cent. per annum) due March 6th, 1912; and also subject to a second deed of trust for the sum of twenty-five hundred dollars (and interest at five per cent. per annum) due March 6th, 1909, and in consideration of the conveyance of the aforesaid property (subject to the two deeds of trust as above recited) by the party of the first part by a good and marketable title unto the said party of the second part and the further considerations as hereinafter specified the said party of the second part does hereby covenant and agree to sell and convey unto the said party of the first part all of those ten (10) dwelling houses situated on Tennessee Avenue between E and F Streets, North-
134 east, and designated as Nos. 519, 521, 523, 525, 527, 529, 531, 533, 535, and 537 Tennessee Avenue, Washington, D.

C.; the said ten houses being subject to a deed of trust to secure the payment of the sum of twenty-two thousand dollars and interest which the said party of the first part assumes.

And it is further agreed on the part of the party of the first part that in consideration of a cash difference of five hundred dollars due to the party of the second part by the party of the first part on the exchange of properties as hereinbefore referred to, that he (the said party of the first part) is to execute and deliver to the said party of the second part his ten promissory notes for the sum of fifty dollars each and interest at six per cent. per annum, and payable in one, two, three, four, five, six, seven, eight, nine and ten months after date and to secure the payment of the said notes, to execute and deliver unto the said party of the second part a second deed of trust on the aforesaid ten houses on Tennessee Avenue, northeast, the said notes to be paid at maturity of same or in case of sale of any one of said houses prior to the maturing of any of said notes, the said house so sold to be released from said second trust by payment of two of the next maturing notes.

And it is agreed on the part of both parties to this Agreement that all taxes, water rents, interest on trust shall be paid or adjusted by each of said owners on their respective properties to April 1st, 1909,

135 and said properties to be conveyed in accordance with this Agreement of Exchange by deeds conveying good and marketable titles from their respective holders, clear of all liens excepting such deeds of trust as hereinbefore specified.

And it is also further agreed that the said party of the second part shall lease unto the said party of the first part the said property herein designated as No. 487 Pennsylvania Avenue (and to be acquired by him as per this Agreement) for the term of two (2) years, dating from the first day of April, 1909, at and for the sum of twenty-five hundred dollars per annum; the said rent to be paid in equal monthly payments of two hundred and eight dollars and thirty-three cents on the first day of each and every month dating from April 1st, 1909.

And it is also further agreed between the said parties to this Agreement that the said lease above referred to shall specify; That should the lessor desire possession of said premises mentioned in said lease at any time during the term of same, he may obtain same at the expiration of sixty days' notice served on said lessee in writing and paying for such surrender the sum of one thousand dollars in cash, providing that the said monthly rentals are promptly paid, and that the said premises have not already been vacated by said lessee.

And it is further agreed that the said lessee may, by giving a sixty days' notice in writing to the said lessor vacate at the end of said sixty days and surrender the said premises to the owner of the same, but without any compensation to himself for so vacating said premises and providing said rent is paid up to the time of sur-
136 rendering same.

In testimony whereof the said parties to this Agreement

have herewith set their hands and seals the day and year first above written.

DANIEL H. NICHOLS. [SEAL.]
J. IRVING BEALMEAR. [SEAL.]

Witness:

W. H. SHOLES,
JAS. A. BEALMEAR.

It is further mutually agreed that D. H. Nichols will assume and pay the costs of holding the second trust on the premises 487 Pa. Ave. until the title can be examined and deed tendered provided said time does not extend beyond April 1, 1909.

DANIEL H. NICHOLS.
J. IRVING BEALMEAR.

Witness:

W. H. SHOLES.

Witness:

JAS. A. BEALMEAR.

DISTRICT OF COLUMBIA, *to wit*:

I, William A. Millan a Notary Public in and for the District of Columbia aforesaid do hereby certify J. Irving Bealmear, party to a certain deed bearing date on the 2nd day of March A. D., 1909 and hereunto annexed personally appeared before me in the District aforesaid the said J. Irving Bealmear being personally well
137 known to me as the person who executed said deed and acknowledged the same to be his act and deed.

Given under my hand and Notarial Seal this 17th day of March 1909.

[SEAL.]

WILLIAM W. MILLAN,
Notary Public, D. C.

(Endorsed.)

Received for Record on the 18 day of March A. D. 1909, at 9.03 A. M. and recorded in Liber No. 3196 folio 421 et seq. one of the Land Records of the District of Columbia.

JNO. C. DANCY,
Recorder.

138

COMPLAINANT'S EXHIBIT No. 2.

This Deed, Made this — day of March in the year Nineteen hundred and nine by and between Daniel H. Nichols (widower), of the District of Columbia, party hereto of the first part, and J. Irving Bealmear, of Baltimore, Maryland, party hereto of the second part:

Witnesseth; that the said party of the first part for and in consideration of the sum of Ten Dollars to him paid by the said party of the second part, does hereby grant and convey unto said party of the second part, in fee simple, the following described land and

premises, with the improvements, easements and appurtenances thereunto belonging, situate and being in the City of Washington, in the District of Columbia, namely; Part of Original Lot Five (5) in Square Four hundred and ninety-one (491) contained within the following metes and bounds, viz;—Beginning for the same on Pennsylvania Avenue, at a point distant Twenty-eight (28) feet, one-fourth ($\frac{1}{4}$) of an inch Northwesterly from the Southeast corner of said lot, and running thence northwesterly on said avenue, Twenty-seven (27) feet, Two and three-fourths ($2\frac{3}{4}$) inches, to the Southwest corner of said lot; thence Northeasterly on the dividing line between said Lot Five (5) and Original Lot Six (6) in said square, One hundred and thirty-two (132) feet, Four and one-quarter ($4\frac{1}{4}$) inches to an alley in the rear of said lot; thence Southeasterly on said rear line, to a point that would be intersected
 139 by a line drawn at right angles to said avenue from the point of beginning; and thence Southwesterly from said point, in a straight line to the point of beginning.

Subject to an indebtedness of Fifteen thousand Dollars (\$15,000.) secured by Deed of Trust dated March 6th, 1907 and recorded in Liber No. 3065 folio 75 of the Land Records of the Office of the Surveyor of the District of Columbia,—which indebtedness the grantee herein assumes and agrees to pay.

Subject also to another indebtedness of Twenty-five hundred Dollars (\$2,500) secured by Deed of Trust dated March 6th, 1907 and recorded in Liber No. 3065 folio 78 of said Land Records,—which indebtedness the grantee herein assumes and agrees to pay.

To have and to hold the said land and premises, with the improvements, easements and appurtenances, unto and to the use of the said party hereto of the second part, in fee simple.

And the said party hereto of the first part does hereby covenant to warrant specially the property hereby conveyed, excepting so far as above mentioned Deeds of Trust are concerned; and to execute such further assurances of said land as may be requisite.

In testimony whereof, on the day and year first hereinabove written, the said party hereto of the first part has hereunto set his hand and seal.

———. [SEAL.]

Signed, sealed and delivered in the presence of—

———.

140 DISTRICT OF COLUMBIA, *To wit:*

I, ——, a Notary Public in and for the District aforesaid, do hereby certify that Daniel H. Nichols (widower) the grantor in and who is personally well known to me to be the person who executed the foregoing and annexed Deed dated March —, A. D. 1909, personally appeared before me, in the District aforesaid, and acknowledged said Deed to be his act and deed.

Given under my hand and official seal, this — day of March A. D. 1909.

———,
Notary Public, D. C.

141

COMPLAINANT'S EXHIBIT No. 3.

This Deed Made this first day of April, A. D. 1909, by and between Daniel H. Nichols of Washington, District of Columbia party of the first pary, and Robert E. L. Smith and ———, of said City and District parties of the second part;

Whereas, the said Daniel H. Nichols is justly indebted unto J. Irving Bealmear in the full sum of Five Hundred (500) Dollars as evidenced by his ten promissory notes each for the sum of fifty (50) dollars and interest at the rate of six per cent per annum, dated even herewith and payable to the said J. Irving Bealmear or order, in one, two, three, four, five, six, seven, eight, nine and ten months respectively from their date, it being hereby understood and agreed by and between the parties hereto that if any of the hereinafter described houses shall be sold before the maturity of said notes or any of them the party of the first part shall be entitled to have any house so sold released from the operation of this trust upon the payment of the two of said notes next thereafter maturing.

And whereas the party of the first part desires to secure the prompt payment of said debt, and interest thereon, when and as the same shall become due and payable, and all costs and expenses incurred in respect thereto, including reasonable counsel fees incurred
142 or paid by the said parties of the second part or substituted trustee, or by any person hereby secured, on account of any litigation at law or in equity which may arise in respect to this trust or the property hereinafter mentioned, and of all money which may be advanced as provided herein, with interest on all such costs and advances from the date thereof.

Now, therefore, this indenture witnesseth, that the party of the first part, in consideration of the premises, and of one dollar, lawful money of the United States of America, to him in hand paid by the parties of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, has granted, and does hereby grant unto the parties of the second part the following described land and premises, situate in the city of Washington, District of Columbia, known and distinguished as Lots eighteen (18) to twenty-seven (27) both inclusive, in James I. Bealmear's subdivision of Square North of Ten Hundred and Fifty Three (1053) according to plat recorded in Book No. 30 at folio eighty six (86) of the office of the Surveyor of the District of Columbia, said lots being improved — houses Nos. 519, 521, 523, 525, 527, 529, 531, 533, 535 and 537 Tennessee Avenue together with all the improvements in anywise appertaining, and all the estate, right, title interest and claim, either at law or in equity, or otherwise however, of the party of the first part, of, in, to, or out
of the said land and premises.

143 In and upon the trusts, nevertheless, hereinafter declared; that is to say: In Trust to permit said Daniel K. Nichols, his heirs or assigns, to use and occupy the said described land and premises, and the rents, issues, and profits thereof to take, have, and

apply to and for his or their sole use and benefit, until default be made in the payment of any one of the promissory notes hereby secured or any instalment of interest thereon, when and as the same shall become due and payable, or any proper cost or expense in and about the same as hereinafter provided.

And upon the full payment of all of said notes, and the interest thereon, and all moneys advanced or expended as herein provided, and all other proper costs, charges, commissions, half-commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Daniel K. Nichols, his heirs or assigns, at his or their cost.

And upon this further trust, upon any default or failure being made in the payment of any note or of any instalment of principal or interest thereon, when and as the same shall become due and payable, or upon default being made in the payment, after demand therefore, of any money advanced as herein provided for, or of any proper cost, charge, commission, or expense in and about the same, then and at any time thereafter the said parties of the second part,

144 the survivor of them or the trustee acting in the execution of this trust shall have the power and it shall be their or his duty thereafter to sell, and in case of any default of any purchaser to resell the said described land and premises at public auction, upon such terms and conditions, in such parcels, at such time and place, and after such previous public advertisement as the parties of the second part, the survivor of them or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee simple, upon compliance with the terms of sale, to and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales; Firstly, to pay all proper costs, charges and expenses, including all fees and costs herein provided for, and all moneys advanced for taxes, insurance, and assessments, with interest thereon as provided herein, and all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of 5 per centum on the amount of the said sale or sales; Secondly, to pay whatever may then remain unpaid of said — notes, whether the same shall be due or not, and the interest thereon to date of payment, it being agreed that said notes, shall, upon such sale being made before the maturity of said notes, be and become immediately due and payable at the election of the holder thereof; and, Lastly, to pay the remainder of said proceeds, if any there be, to said Daniel K. Nichols, his heirs or assigns, upon the delivery and surrender to the purchaser,
145 his, her or their heirs or assigns, or possession of the premises so as aforesaid sold and conveyed, less the expense, if any, of obtaining possession.

And the said Daniel K. Nichols does hereby agree at his own cost, during all the time wherein any part of the matter hereby secured shall be unsettled or unpaid, to keep the said improvements insured against loss by fire in the full sum of — dollars, in the name and to the satisfaction of the parties of the second part, or substituted

trustee, in such fire insurance company or companies as the said parties of the second part may select, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not, unless the party entitled to receive shall waive the right to have the same so applied; and also to pay all taxes and assessments, both general and special, that may be assessed against, or become due on said land and premises during the continuance of this trust, and that upon any neglect or default to so insure, or to pay taxes and assessments, any party hereby secured may have said improvements insured and pay said taxes and assessment, and the expense thereof shall be a charge hereby secured and bear interest at the rate of six per centum per annum from the time of such payment.

And it is further agreed that if the said property shall be advertised for sale as herein provided and not sold, the trustee or trustees acting shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.

And the said party of the first part covenants that he will warrant specially the land and premises hereby conveyed, and that he will execute such further assurances of said land as may be requisite or necessary.

In witness whereof, the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

_____. [SEAL.]
 _____. [SEAL.]
 _____. [SEAL.]
 _____. [SEAL.]

Signed, sealed, and delivered in the presence of—

_____.
 _____.
 _____.

UNITED STATES OF AMERICA,

District of Columbia, to-wit:

I, _____, a Notary Public in and for the District of Columbia, Do Hereby Certify that Daniel K. Nichols party to a certain Deed bearing date on the — day of —, 1909, and hereto annexed, personally appeared before me in said District the said Daniel K. Nichols being personally well known to me as the person who executed the said Deed and acknowledged the same to be his act and deed.

Given under my hand and seal this — day of —, A. D. 1909.

_____.

148

COMPLAINANT'S EXHIBIT No. 4^a.

\$50.00.

WASHINGTON, D. C., April 1, 1909.

One month after date, for value received, I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with

10—2206A

interest at the rate of 6 per centum per annum until paid; said interest payable —.

No. —.

Due — —.

— —, Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, Trustees.

COMPLAINANT'S EXHIBIT No. 4^b.

\$50.00.

WASHINGTON, D. C., April 1, 1909.

Two months after date, for value received, I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with interest at the rate of 6 per centum per annum until paid; said interest payable —.

No. —.

Due — —.

— —, Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, Trustees.

COMPLAINANT'S EXHIBIT No. 4^c.

\$50.00.

WASHINGTON, D. C., April 1, 1909.

Three months after date, for value received I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with interest at the rate of 6 per centum per annum until paid; said interest payable —.

No. —.

Due — —.

— —, Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, Trustees.

COMPLAINANT'S EXHIBIT No. 4^d.

\$50.00.

WASHINGTON, D. C., *April 1, 1909.*

Four months after date, for value received, I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with interest at the rate of 6 per centum per annum until paid; said interest payable —.

No. —.

Due — —.

— —, Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, *Trustees.*

150

COMPLAINANT'S EXHIBIT No. 4^e.

\$50.00.

WASHINGTON, D. C., *April 1, 1909.*

Five months after date, for value received, I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with interest at the rate of 6 per centum per annum until paid; said interest payable —.

Due — —.

— —, Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, *Trustees.*

COMPLAINANT'S EXHIBIT No. 4^f.

\$50.00.

WASHINGTON, D. C., *April 1, 1909.*

Six months after date, for value received, I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with interest at the rate of 6 per centum per annum until paid; said interest payable —.

No. —.

Due — —.

— —, Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, *Trustees.*

151

COMPLAINANT'S EXHIBIT No. 4^g.

\$50.00.

WASHINGTON, D. C., *April 1, 1909.*

Seven months after date, for value received, I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with interest at the rate of 6 per centum per annum until paid; said interest payable —.

No. —.

Due — —.

— —,
Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, *Trustees.*

COMPLAINANT'S EXHIBIT No. 4^h.

\$50.00.

WASHINGTON, D. C., *April 1, 1909.*

Eight months after date, for value received, I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with interest at the rate of 6 per centum per annum until paid; said interest payable —.

No. —.

Due — —.

— —,
Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, *Trustees.*

152

COMPLAINANT'S EXHIBIT No. 4ⁱ.

\$50.00.

WASHINGTON, D. C., *April 1, 1909.*

Nine months after date, for value received, I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with interest at the rate of 6 per centum per annum until paid; said interest payable —.

No. —.

Due — —.

— —,
Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, *Trustees.*

COMPLAINANT'S EXHIBIT No. 4j.

\$50.00.

WASHINGTON, D. C., April 1, 1909.

Ten months after date, for value received, I promise to pay to J. Irving Bealmear or order, the sum of Fifty Dollars, at — with interest at the rate of 6 per centum per annum until paid; said interest payable —.

No. —.

Due — —.

— —, Address — —.

N. B.—Retain this Note after payment and produce it when a Release is obtained.

Secured by Deed of Trust on Lots 18 to 27 in J. I. Bealmear's Sub. of Sq. N. 1053.

R. E. L. SMITH,
— —, Trustees.

153

COMPLAINANT'S EXHIBIT No. 5.

This lease made this first day of April, 1909, between J. Irving Bealmear of the City of Baltimore, State of Maryland of the first part, and Daniel H. Nichols of the City of Washington, District of Columbia, party of the second part, whereby the party of the first part has leased to the said party of the second part, the premises known as No. 487 Pennsylvania Avenue, Northwest, Washington, D. C., (the same being a hotel) for the term of two years, commencing on the first day of April A. D., 1909, at and for the rent of five thousand dollars, payable in monthly instalments, in advance; that is to say two hundred and eight and 33/100 dollars on the execution of this lease, as the first instalment in advance, and a like sum on the first day of each ensuing month thereafter.

And the said party of the second part has agreed to take, and does hereby take and hold the premises as a tenant for the term aforesaid, at the said rent, payable as aforesaid.

It is further provided that should the lessor desire possession of said premises at any time during the term aforesaid, he may obtain the same at the expiration of a sixty days' notice in writing served on said lessee by paying to said lessee the sum of one thousand dollars (\$1,000) provided the said monthly instalments are promptly paid and the said premises have not been vacated by said lessee.

154

It is further provided that the said lessee may by giving sixty days' notice in writing to the said party of the first part vacate the said premises at the expiration of the said sixty days, but without compensation to himself for so vacating, whereupon this lease shall terminate, provided the said instalments of rent are paid up to and including the time when the property is surrendered.

In testimony whereof, We have hereunto set our hands and seals the day and year first herein written.

J. IRVING BEALMEAR. [SEAL.]
— —. [SEAL.]

RUDOLPH J. MOTZ, *Witness*.

155

COMPLAINANT'S EXHIBIT No. 6.

This deed made this First day of April in the year one thousand nine hundred and nine by and between J. Irving Bealmear, of the City of Baltimore, State of Maryland, party of the first part, and Daniel H. Nichols, of the City of Washington, District of Columbia, party of the second part:

Witnesseth, That in consideration of ten Dollars, the party of the first part does grant unto the party of the second part, in fee simple, all those pieces or parcels of land in the City of Washington, District of Columbia, described as follows, to wit: Lots eighteen to twenty-seven both inclusive, in James I. Bealmear's subdivision of Square North of Ten Hundred and fifty-three (1053), according to plat recorded in Book No. 30, at folio eighty-six, of the office of the Surveyor of the District of Columbia, said lots being improved by houses Nos. 519, 521, 523, 525, 527, 529, 531, 533, 535 and 537 Tennessee Avenue, together with the improvements, rights, privileges, and appurtenances to the same belonging, subject to a certain deed of trust to secure the payment of the sum of twenty-two thousand dollars (\$22,000) and interest, which the said party of the second part assumes.

And the said party of the first part covenants that he will warrant specially the property hereby conveyed; except so far as the above mentioned deed of trust is concerned, and that he will execute such further assurances of said land as may be requisite.

Witness my hand and seal the day and year hereinbefore written.

Cancelled
[J. IRVING BEALMEAR.]* [SEAL.]
P. H. MARSHALL, [SEAL.]
Examiner.

In presence of—

JAS. A. BEALMEAR.

STATE OF MARYLAND,

City of Baltimore, To wit:

I, Rudolph J. Motz a Notary Public in and for the City of Baltimore and State of Maryland, duly commissioned and qualified, do hereby certify that J. Irving Bealmear party to a certain Deed bearing date on the first day of April 1909, and hereto annexed, personally appeared before me in said City of Baltimore, the said J. Irving Bealmear being personally well known to me as the person who executed the said Deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this first day of April 1909.

[SEAL.]

RUDOLPH J. MOTZ, [SEAL.]
Notary Public.

My Commission expires May 1st, 1910.

[*Word Cancelled written across name in brackets.]

No. 124.

STATE OF MARYLAND,
Baltimore City, sct:

157 I, Stephen C. Little, Clerk of the Superior Court of Baltimore City, do hereby certify That Rudolph J. Motz Esquire, before whom the annexed acknowledgment was made and who has thereto subscribed his name, was at the time so doing, a Notary Public of the State of Maryland, in and for the City of Baltimore, residing in said City and State, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I therefore certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In testimony whereof, I hereto set my hand, and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 1st day of April, 1909.

[SEAL.] STEPHEN C. LITTLE,
Clerk of the Superior Court of Baltimore City.

158 COMPLAINANT'S EXHIBIT No. 7.

Short Copy.

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 51517.

FRANK O. NICHOLS, Plaintiff,
 vs.
 DANIEL H. NICHOLS, Defendant.

1909, March 29. Declaration filed, on note and account.

1909, March 30. Judgment for Pl'ff by confession for.. \$1675.00
 with interest on \$695. from Apr. 4,
 1895, and on \$200 from August 5,
 1895.

Cost of Protest.....	
Costs of Suit.....	18.55
“ add'l to Satisfy.....	.40
Less credit, of \$— paid.	

1—, — —. Fi. Fa., issued.
 —, — —. “ “ returned.

\$— of said costs due Clerk.

Test:

[SEAL.]

J. R. YOUNG, *Clerk.*
 By ALF G. BUHRMAN, *Ass't Clerk.*

Jan'y 13", 1910.

159

COMPLAINANT'S EXHIBIT No. 8.

Short Copy.

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 51518.

WILLIAM A. JOLINE, Plaintiff,
vs.
DANIEL H. NICHOLS, Defendant.

1909, March 29.	Declaration in debt on foreign judgment filed.	
1909, March 30.	Judgment for Pl'ff by confession for..	\$584.16
	With interest from March 24, 1909....	_____
	Cost of Protest.....	_____
	Costs of Suit.....	17.80
	“ “ “ in foreign jurisdiction...	7.50
	“ add'l to Satisfy.....	.40
		<hr/> 25.70

Less credit, of \$— paid.

1—, — —. Fi. Fa., issued.
—, — —. “ “ returned.
\$— of said costs due Clerk.

Test:

[SEAL.]

J. R. YOUNG, *Clerk*,
By ALF G. BUHRMAN, *Ass't Clerk*.

Jan'y 13'', 1910.

160

Testimony on Behalf of Defendants.

Filed Mar. 29, 1910.

* * * * *

WASHINGTON, D. C., *January* 28, 1910,
Friday, at 2 o'clock p. m.

Met, pursuant to agreement of counsel, to take testimony on behalf of defendants in above styled cause.

Present:

Noel W. Barksdale, Esq., of counsel for defendants.
Messrs. Millan and Smith, attorneys for plaintiff.
Also the Witnesses, and the Examiner.

Whereupon, LEONARD C. WOOD, a witness of competent age called on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BARKSDALE:

Q. Mr. Wood, what is your business? A. Lawyer and real estate dealer.

Q. How long have you been dealing in real estate? A. Ever since I have been in Washington—twenty-five years.

Q. What has been your line of business as real estate agent; what have you been doing? A. For twenty years buying and
161 selling on my own account, and since then buying and selling for others.

Q. Are you acquainted with the values in Bealmear's subdivision of square north of square 1053, in the District of Columbia, known as numbers 519, 521, 523, 525, 527, 529, 531, 533, 535, 537 Tennessee Avenue, Northeast? A. Yes sir.

Q. Are you acquainted with the improvements on that property? A. Yes sir.

Q. Are you acquainted with other property in that immediate vicinity, and its value? A. Yes sir.

Q. Have you bought or sold for other people any property in this immediate vicinity? A. Yes sir.

Q. State whether or not as an agent or broker you have at the present time any property in this immediate vicinity for sale? A. Not in the immediate vicinity; no.

Q. Do you know of any sales that have been made down there, of property? A. I have made several myself; yes sir.

Q. Have you ever examined any of that property that we have spoken of—gave you the numbers of? A. Yes sir, I saw them during the course of construction, and I saw them for the last time yesterday afternoon.

Q. What if any examination did you make of them at the time they were constructed? A. Casually, just to see how they were constructing them—what materials they were using, and how
162 they were going to be finished.

Q. How frequently did you see them during construction? A. Well, I should judge half a dozen or more times; I couldn't answer that question with any degree of certainty.

Q. Do you know what is the frontage of the lots? A. Sixteen feet.

Q. What depth, if you know? A. I should judge about an average of sixty feet.

Q. Are they all the same depth? A. No sir.

Q. In your opinion, what is the value of that property per square foot?

Mr. MILLAN: That is objected to as irrelevant, immaterial and incompetent, being wholly inconsistent with the theory of the defense in this case as set forth in the answer, which is to the effect that

the contract sued upon was never made; and also on the ground that it is not alleged in the answer that any fraud was practiced upon the defendant Nichols in the making of the exchange set forth in the bill, or that the value was grossly overstated.

A. Thirty cents.

Q. Does that apply to each foot in each lot? A. Yes, taking the subdivision as a whole, thirty cents would be a fair value.

Q. Have you had any experience in the erection and building of houses, Mr. Wood? A. Yes sir.

Q. In your opinion, what would it cost to construct similar houses?

Mr. MILLAN: I make the same objection as last above
163 stated.

A. Two thousand dollars at the outside—possibly less—I am giving them the benefit of the doubt at two thousand dollars.

Q. What in your opinion, Mr. Wood, is the value of these ten houses, including the lots?

Mr. MILLAN: Same objection.

A. The cash value, in my opinion, would be at the outside twenty-seven hundred dollars.

Q. Are you acquainted with the property known as 487 Pennsylvania Avenue, Northwest, called the Mount Vernon Hotel? A. Yes sir.

Q. What in your opinion is the value of that property?

Mr. MILLAN: I make the same objection on the same grounds as above stated.

A. Thirty-five thousand dollars.

Q. And that is the lot and improvements? A. The lot and improvements as it stands to-day.

Q. What in your opinion is the value of the improvements separate and apart from the real estate? A. Fifteen thousand dollars, say.

Mr. BARKSDALE: That is all.

Cross-examination.

By Mr. SMITH:

Q. Mr. Wood, you say you are a lawyer and real estate dealer? A. Yes sir.

Q. You are not practicing law now? A. I am; yes sir.

Q. For whom have you been selling real estate during
164 the last five years? A. Well, I have been associated with Mr. John Quinn during a great part of the time, and since then on my own account.

Q. I thought you said on your direct examination that you had been selling real estate on your own account up to within the last five years, and since then for others; is that correct? A. Yes sir.

Q. Whom have you been selling for during the last five years?
A. You mean the owners of the property?

Q. No sir; who have you been representing? A. John Quinn.

Q. Anyone else? Anyone else in the real estate business? A. No sir.

Q. Have you made some actual sales of houses in the neighborhood of these houses of Mr. Bealmear's? A. Yes sir.

Q. Can you give us the numbers of the houses which you sold in that neighborhood? A. Thirteen hundred and something—I can't give the exact numbers, but I sold within a square of there, but the numbers I can't recall.

Q. Can you tell us in what square they are? A. No, I cannot.

Q. Can you tell us between what streets? A. E Street, between 13th and 14th.

Q. Can you tell us to whom they were sold? A. I could not from memory; no sir.

Q. Which side of the street were these houses on that
165 you sold? A. On the north side.

Q. Were they southeast or northeast? A. Northeast.

Q. Did white or black people buy them? A. White people.

Q. What was the size of the lot? A. Eighteen feet front by a hundred feet deep.

Q. How many houses have you sold in that neighborhood during the last five years? A. In the immediate neighborhood, possibly to the extent of a half a dozen; I can't recollect that.

Q. Can you give us the name of a single person to whom you have made a sale in that neighborhood? A. No sir, I cannot.

Q. How long since you sold a house there? A. About two years ago; three years ago, say.

Q. When were these houses of Mr. Bealmear's erected? A. Well, in the last three or four years; I really forget.

Q. Who built them, do you know? A. No, I didn't notice.

Q. Did you go through them when they were being constructed?
A. I always look at any new building whenever I pass it.

Whereupon, at the request of counsel, the question next above was read to the witness.

A. Yes sir.

Q. When you said you casually examined them, you meant you carefully examined them, did you? A. I noticed how they were being finished.

166 Q. How were they finished? A. White pine, say, or some kind of pine, if I remember right.

Q. Do you know what white pine is? A. Yes; Virginia pine and North Carolina pine, yes sir.

Q. You can't recollect whether they were finished in white pine or not? A. I wish I could, but I can't.

Q. How many rooms did they contain? A. Six rooms and cellar; furnace.

Q. Gas? A. Gas; yes sir.

Q. Bath room? A. Yes sir.

Q. Where are the baths? A. On the second floor.

Q. There is no third floor, is there? A. No, sir.

Q. How is the bath finished? A. I don't recollect that; I didn't look at that when I was there yesterday.

Q. You don't recollect very much about how the houses are finished, do you, Mr. Wood? A. Yes, I know the houses, Mr. Smith.

Q. When you sold those houses in this neighborhood to which you have referred, what price per foot did you put on the land? A. I have forgotten now who built them. There was no price per foot put on the land; the houses were sold finished and completed.

167 Q. Were they new houses? A. Yes sir.

Q. Who constructed them? A. I don't remember.

Q. Did they have a cellar? A. Yes sir.

Q. Bath? A. Tiled bath; tiled vestibule.

Q. How were they finished? A. In hard wood.

Q. What do you mean by hard wood? A. Oak.

Q. Oak finish is better than pine finish, isn't it? A. Certainly.

Q. What did you get for those houses? A. Thirty-seven hundred and fifty dollars.

Q. Do you know of any property for sale in that neighborhood now? A. I have got 1323 E Street that I can sell—twenty feet front by a hundred feet deep; six rooms; furnace heat; hard wood finish; oak vestibule; reception hall, for thirty-four hundred dollars.

Mr. SMITH: I move to strike out that answer because it is not responsive to the question.

WITNESS: What is the question?

Whereupon the last question was read to the witness.

A. Yes sir, I do.

Q. How far is E Street from the property of Mr. Bealmear? A. Within two squares—I mean this property I spoke of.

Q. How long have you known Mr. Nichols? A. Ten years—possibly a little bit longer; not intimately at any time, however.

168 Mr. SMITH: I move to strike out the last part of that answer because it is not responsive to the question.

Q. Have you ever done any business for Mr. Nichols? A. Yes sir.

Q. What kind of business? A. Collected rent for Mr. Nichols, and sold real estate for Mr. Nichols.

Q. How recently, Mr. Wood? A. Within the last year.

Q. Are you doing any business for him now? A. No sir.

Q. Had no trouble with him, have you, Mr. Wood? A. No sir.

Q. Were you ever in his house, 487 Pennsylvania Avenue? A. Yes sir.

Q. Did you ever live there? A. No sir.

Q. Are you connected with him in any way? A. No sir.

Q. Have you been all through that house? A. No sir—yes I have too, but I wasn't in every room in that house.

Q. How many rooms are in that house? A. I can't recollect.

Q. How is that house finished? A. Well, it is an old time hotel house.

Q. It is a very old house, isn't it, Mr. Wood? A. It is in good order.

Q. Sir? A. No sir, it has been built for some years, but I wouldn't class it as an old house, no sir.

Q. You wouldn't class it as an old house? A. No
169 sir.

Q. What is it worth? A. Thirty-five thousand dollars; that is the lowest estimate.

Q. What do you say the house itself is worth? A. Fifteen thousand dollars, say; that is the outside limit.

Q. How did you arrive at that? A. Judging from the improvements that have been made on the house, and its actual value.

Q. What improvements have been made on it? A. Quite a number of interior improvements.

Whereupon, at the request of counsel, the last question was read to the witness.

A. Cement floors—the improvements that might go in—I mean permanent improvements.

Q. Just state what they are, that you know of? A. I know the toilets——

Q. (Interrupting.) Now, let us stick to the cement floors. How many cement floors have been put in there? A. I don't know whether one or two—say one, to be on the safe side. One that I know of, on the ground floor.

Q. On the ground floor? A. Yes; that goes from the door back.

Q. How far back? A. Back to the dining room.

Q. What would be the area of that floor? A. I give it up.

Q. You hav-n't any idea what it would cost, have you? A. I wouldn't want to state now, because I don't know at all.

170 Q. Any estimate you base on the cement floors, you will have to waive, then? A. On that line; yes sir.

Q. What is the next improvement you know of there? You said something about toilets, didn't you? A. Yes.

Q. How many toilets have been put in there? A. I can't state the number.

Q. How do you reach any estimate if you don't know how many there are? A. I am reaching the value that I placed on it at the time that I looked at it; I couldn't tell you the number of things now.

Q. You don't know the cost of those toilets to which you refer? A. No sir.

Q. Then any estimate you base upon the toilets you will have to waive for the purpose of this valuation? A. Yes sir.

Q. Now, what else have they done in there, by way of improvements? A. Nothing further.

Q. How long has it been since you made the estimate of fifteen thousand dollars as the value of that property?

WITNESS: I would like to correct that fifteen thousand dollars as too high an estimate on the value of the improvements.

Mr. SMITH: All right, sir, go ahead if you want to get this straight.

WITNESS: I want to get it straight; yes. I wouldn't make
171 it any less than twelve thousand, anyway.

Q. Now, let us see how you get that? A. Well, from general knowledge of what like properties will bring.

Q. Do you know where there is any like property for sale? Q. Not as cheap as that; no sir.

Mr. SMITH: I move to strike out that answer as not responsive.

Whereupon the last question was read to the witness.

A. No sir.

Q. Did you ever build a house like that, Mr. Wood, or any house like it? A. No sir.

Q. Can you tell us of any other use that any real estate man would likely make of the building on that property if he should buy it?

Mr. BARKSDALE: I object to that.

WITNESS: I couldn't answer it anyway.

Q. What use could be made of it, Mr. Wood? A. Hotel.

Q. Is it fit for a hotel? A. Yes sir.

Q. Any other purpose? A. Hotel.

Q. It is not fit for anything but a hotel? A. I wouldn't base an opinion on anything else.

Q. What is the size of that house? A. How do you mean?

Q. How many stories? A. I ought to be able to answer that—four stories, I think.

Q. What is the depth of it? A. Oh, say an average of a
172 hundred and thirty feet.

Q. You mean the building, not the lot? A. I mean the building too.

Q. How many rooms in it? A. I couldn't answer that a moment ago, and I can't answer it now. I really have forgotten the number of rooms, although I did know.

Q. If you were to buy that lot, Mr. Wood, would you be willing to pay twelve thousand dollars for the improvements on it? A. If I wanted it for a hotel business, yes.

Q. Suppose you didn't want it for a hotel business? A. That would depend entirely on the purpose for which I desired to purchase the building.

Q. You don't know anything about the hotel business, do you? A. No sir; except as a guest.

Q. Were you ever a guest at this hotel? A. No sir.

Q. Do you know how many feet are in that lot? A. I have forgotten.

Q. Do you know the width of it? A. It is either twenty-six or twenty-seven feet—something like that.

Q. Are you guessing now? A. If I was not guessing I would answer exactly; I am guessing, yes sir.

Q. Now what do you say that ground down there is worth a foot, where that building stands? A. Ten dollars a foot.

Q. How do you fix that price? A. By values in the neighborhood of this very lot.

173 Q. Do you know any property in the neighborhood for sale? A. I do; yes sir.

A. I do; yes sir.

Q. Where? A. That is my own property, in the immediate neighborhood.

Q. All right; what property? A. On the Avenue, between 6th and 7th.

Q. Do you know of any other property? A. No sir.

Q. Do you mind telling us the location of the property to which you refer? A. Yes; I am not at liberty to disclose the exact property.

Q. Do you mind telling us the price at which it is held? A. I am not at liberty to answer.

Q. How are the values of properties affected by whether they are located between 6th and 7th, or between Four-and-a-half and 6th? A. If it is anything, it is a shade of advantage in the value of the property between 6th and 7th than between Four-and-a-half and 6th.

Q. As you progress westward on Pennsylvania Avenue, is it not true that property increases rapidly in value? A. Yes sir, after you pass 7th Street.

Q. Isn't that true after you pass 6th Street? A. As I say, only a shade.

Q. What do you mean by shade? A. Comparatively very little difference.

174 Q. Do you know of any sales of property in that locality on Pennsylvania Avenue? A. Not within the last three years.

Q. Mr. Wood, hasn't property in this immediate neighborhood been materially affected by the removal of the Pennsylvania Depot? A. Yes sir.

Q. Property there isn't as valuable now as it was? A. No sir.

Q. When you fixed your estimate of value on No. 487 Pennsylvania Avenue, was it not on an occasion when you were looking at it for the purpose of handling it? A. Yes sir.

Q. And then you fixed the value which you testified to here? A. Yes sir; Mr. Nichols was asking forty thousand dollars for it then.

Q. Do you mean that was what Mr. Nichols would have sold it for then? A. I never heard any lower price than forty thousand dollars.

Q. Were you dealing for Mr. Nichols, or for some one else? A. He placed it in my hands for sale.

Q. When was that, Mr. Wood? A. Within the last two years.

Q. Do you still have it for sale? A. No sir.

Q. How much would you say that that property has been affected by the removal of the Pennsylvania Depot, and other things? A.

The value I put on it was placed on it after the station had
175 been removed.

Q. You say it is worth as much now as it was two years ago? A. Yes sir.

Q. Is it worth any more, Mr. Wood? A. No sir.

Q. Mr. Wood, did you ever sell any ground, or buy any ground, in the neighborhood of these houses of Mr. Belamear's on Tennessee Avenue? A. Nothing this side of H Street.

Mr. SMITH: That is all.

Redirect examination.

By Mr. BARKSDALE:

Q. Does the value that you placed on the Tennessee Avenue property and the Pennsylvania Avenue property in your direct examination apply to last March and April? A. Yes sir.

Mr. BARKSDALE: That is all.

LEONARD C. WOOD.

Subscribed before me this 28 day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

NOTE.—At this point an adjournment was taken, subject to notice.

P. H. MARSHALL,
Examiner in Chancery.

176

WASHINGTON, D. C., *February 9, 1910,*
Wednesday, at 1 o'clock p. m.

Met, pursuant to agreement of counsel, to continue the taking of testimony on behalf of defendants in above cause.

Present:

Noel W. Barksdale, Esq., of counsel for defendants;
Messrs. Millan and Smith, attorneys for plaintiff;
Also the Witnesses, and the Examiner.

Whereupon JAMES A. ETTINGE, a witness of competent age called on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BARKSDALE:

Q. Please state your age and occupation, Mr. Ettinge? A. Twenty-three; in charge of foreign advertising, Washington Post.

Q. Are you acquainted with Mr. Daniel H. Nichols? A. Yes sir.

Q. Did you ever see or know Mr. James A. Bealmear? A. Not until the time he was introduced to Mr. Daniel H. Nichols.

Q. Do you know about when that was? A. About the last week in February, 1909.

Q. And where? A. At the Mount Vernon Hotel.

Q. By whom was he introduced? A. By Mrs. Sterrett.

Q. What did Mrs. Sterrett say when she introduced Mr. Bealmear? A. Some words to this effect: "Mr. Nichols, this is Mr. Bealmear who owns those properties over there on Tennessee Avenue."

Q. Had you ever seen Mr. Bealmear prior to that time? A. No sir.

Q. Have you seen him since that time? A. Once, yes sir.

Q. When was that? A. One or two days preceeding the 4th of March of 1909.

Q. Where was it you saw him? A. At the Mount Vernon Hotel.

Q. What was he doing there, if you know? A. He came there to transact business with Mr. Nichols.

Q. Do you know whether he signed any papers there at that time? A. He did.

Q. Did you hear Mr. Bealmear say anything to Mr. Nichols at the time of the execution of those papers? A. Mr. Nichols asked Mr. Bealmear whether the principal of the trust on the properties on Tennessee Avenue, Northeast, heretofore mentioned, could stand for a time indefinite, or words to that effect, and Mr. Bealmear assured Mr. Nichols that this could be done by paying the interest on this principal, which I understood him to quote was \$110 per month. Mr. Nichols insisted whether he could have Mr. Bealmear's guarantee of five years' time on this principal, which Mr. Bealmear again assured him he could have.

Q. Was that before or was it after the execution of the contract? A. That was immediately before the execution of the contract.

Q. Did you see Mr. Bealmear sign the contract? A. Yes sir.

178 Q. Who was present at the time, that you recall? A. Mr. Bealmear, Mr. Sholes, Mr. Nichols, Mr. Wright—standing back of me with Mr. Pohlig, and two or three others that I don't exactly remember.

Q. How did you happen to see Mr. Bealmear sign the contract? A. By a remark made on the part of Mr. Nichols to me—to myself, as we were sitting in the so-called cosy corner, which is but a few feet away from the room in which the contract was signed, and supposing the remark was directly intended for myself, I arose and followed Mr. Nichols into the room, and thus happened to overhear the above mentioned statement.

Q. I show you plaintiff's Exhibit No. 1, and ask you to look at it and tell me whether or not you saw that paper executed there on the 2nd of March, 1909? (Handing said Exhibit to witness, who examined same.) A. I did.

Q. Look at the signature, or the space for the signature, under the name of Daniel H. Nichols, and tell me whether or not you saw

Mr. James A. Bealmear affix a signature to that paper at that time?
A. I did.

Q. Please state what name Mr. Bealmear attached there at that time, in your presence? A. To my recollection——

Mr. MILLAN (interrupting): I object to the witness stating unless he knows—we don't want his surmise.

Whereupon, at the request of counsel, the previous question was read to the witness.

A. To my recollection Mr. Bealmear signed James A., abbreviating James to read J-a-s. A. Bealmear.

179 Mr. BARKSDALE: Go on, if you want to say anything else?

WITNESS: Would the coincidence I mentioned to you yesterday be of any value?

Q. What, if anything, recalls the circumstance to your mind that that was the name that was signed there? A. The circumstances, or the particular recollection of the signature, is due to the fact that my first two initials are James A., and I recollect thinking at the time that it was rather a peculiar incident that said Mr. Bealmear should have the same two first initials as my own.

Q. I will ask you whether or not Mr. James A. Bealmear signed the name J. Irving Bealmear, or J. I. Bealmear, to that paper?
A. Positively not.

Q. Do you recall whether or not you saw him sign in the space below and under the signature of Daniel H. Nichols, below the writing in pen and ink? A. I do.

Q. State whether or not your testimony with reference to that applies to what you have just stated about the first signature? A. It does.

Cross-examination.

By Mr. MILLAN:

Q. How long have you held your present position with the Washington Post? A. Since the 1st of August, 1909.

Q. Where is your home? A. Speaking or past, present or future?

Whereupon, at the request of counsel, the previous question was read to the witness.

WITNESS: I would like to have an answer to my question please.

180 Mr. BARKSDALE: Oh no, you will have to answer the question.

A. I am at present, of course, living in Washington.

Q. Where in Washington? A. At 41 Quincy Place.

Q. Are you a married man? A. Yes sir.

Q. Do you keep house at that number? A. Temporarily.

Q. How long have you lived there? A. Since July, 1909.

Q. How long have you lived in Washington? A. For a period of about one and a half or two years.

Q. Where were you employed before your present employment with the Post? A. At the Raleigh Hotel, this City.

Q. In what capacity? A. Night auditor.

Q. Where did you live before you came to Washington? A. Chicago.

Q. What business were you in there? A. None.

Q. Where were you living at the time of this transaction about which you have testified? A. At the Mount Vernon Hotel, 487 Pennsylvania Avenue, Northwest, this City.

Q. How long did you live there, or board there? A. I don't recall.

Q. Did you continue to board there from February, 1909, until July, when you went to Quincy Place? A. Yes sir.

Q. How long had you been there prior to February? A. I don't recollect.

181 Q. Well, give your best recollection, Mr. Ettinge? A. I don't recollect exactly, and it is no use to say anything I don't recollect.

Q. Are you connected in any way with Mr. Nichols, the defendant in this suit? A. Not at all.

Q. What time of day was it that the signing of these papers took place? A. To my recollection, either shortly before or shortly after noon.

Q. What are your hours of duty at the Post? A. Nine A. M. to 6 P. M.

Q. What were they at that time? A. I was not employed at the Post at that time.

Q. Where were you employed? A. At the Raleigh Hotel.

Q. And your duties there were at night, I believe you told me? A. Yes.

Q. You are positive that that signature which Mr. Bealmear attached to this paper, Exhibit No. 1, in two places, was the signature, James A. Bealmear? A. I am.

Q. And that it was not J. Irving Bealmear, or J. I. Bealmear? A. Positively, I am.

Q. You are just as certain of that as you are of anything you have testified here today? A. Just as certain.

Q. You said that some remark was made by Mr. Nichols which you thought was addressed to you, and that caused you to follow him into the room; was that remark made in the hearing of Mr.

Bealmear? A. No, it was made as Mr. Nichols came up
182 the stairs and passed us, walking toward the room where the gentlemen were located.

Q. Did you see Mr. Bealmear when he arrived on the scene that day at the hotel? A. I don't know.

Q. You don't know who came with him? A. I do not.

Q. What first attracted your attention, or brought you in contact with Mr. Bealmear and Mr. Nichols on that day? A. The remark heretofore mentioned made supposedly to me by Mr. Nichols.

Q. What was that remark? A. As near as I can recollect, Mr. Nichols said, "Boys, here is where I go in and sign my death warrant."

Q. What was your interest in the matter, that caused you to take such immediate attention to what happened? A. None whatsoever.

Q. Who else was present in the room at the time this signing took place? A. To my immediate recollection, Mr. Bealmear, Mr. Sholes—pardon me, may I ask you the question you asked me again?

Whereupon the question was read to the witness.

A. I said Mr. Bealmear and Mr. Sholes, Mr. Nichols, Mr. Wright, Mr. Pohlig, and two or three others whose identity I do not recall.

Q. Where was this room? A. It is the parlor of the Mount Vernon Hotel.

Q. On which floor? A. The second—that is the legal
183 term for the one above the street, is it not?

Q. These other persons whom you cannot identify, where did they come from? A. I don't know.

Q. Did you find them in the parlor when you went in? A. I believe they were in there.

Q. Did Mr. Nichols ask you to come in as a witness to the transaction, to observe what went on? A. He did not.

Q. How did these other gentlemen, Mr. Wright and Mr. Pohlig, happen to be there? A. Mr. Wright was sitting in the cosy corner heretofore referred to, with myself, and followed me in.

Q. Did you say anything to him that caused him to follow you in? A. Not that I know of.

Q. Now tell me about Mr. Pohlig—what brought him in? A. I don't know.

Q. Was he with you? A. He was not.

Q. Do you know where he came from when he came into the parlor? A. I do not.

Q. Did you find him there when you came in? A. I found him standing immediately back of me just as I entered the room.

Q. You have no idea what caused him to come in? A. I have not.

Q. How long were you in the parlor? A. For a brief space of time.

Q. How long? A. I don't remember.

184 Q. Were you there five minutes? A. Possibly.

Q. Was it ten minutes? A. Possibly.

Q. Give me your best recollection about how long it was? A. I hav-n't any at all.

Q. Would you say you were there as long as fifteen minutes? A. Possibly; yes.

Q. Do you think you were there as long as thirty minutes? A. I don't think so; no.

Q. You think it was more than fifteen, but less than thirty? A. Thereabouts.

Q. Did you sit down? A. I did not.

Q. Did Mr. Pohlig and Mr. Wright take chairs? A. They did not, to my recollection.

Q. Was Mrs. Sterritt there on that occasion? A. That I do not remember.

Q. Where was Mr. Nichols when he made this remark to you about signing his death warrant? A. As I have heretofore answered the question, he was coming up the stairs intent on entering the room where the combatants, or participants, were sitting.

Q. Who was with him? A. Himself.

Q. This cosy corner I understand is on the second floor? A. Yes sir.

185 Q. Where, with reference to the parlor? A. Possibly four feet away.

Q. Did you know who signed the paper as witness or witnesses to the signatures of the parties? A. Mr. Sholes.

Q. Anyone else. A. Not that I remember.

Q. You were not asked to sign? A. I was not.

Q. Tell me again just what the words of Mr. Bealmear were in regard to the mortgage, or deed of trust, on the Tennessee Avenue property? A. The exact words I do not remember.

Q. Well, you undertook to tell us what he said on your direct examination; I would like for you to repeat it as near as you can? A. To Mr. Nichols' question, whether the trust—whether the principal of the trust could be held indefinitely by merely paying the interest thereon, Mr. Bealmear answered in the affirmative. Upon Mr. Nichols insisting whether Mr. Bealmear could guarantee this for a period of five years, Mr. Bealmear again answered in the affirmative, and by gesture impressed me——

Mr. MILLAN: Well, I think you had better not tell your impressions.

WITNESS: Very well. Cross the impressions out and you have the answer.

Mr. MILLAN: I ask to have the witnesses separated.

Mr. BARKSDALE: Don't you think that this request comes rather late, in as much as the witnesses for complainant were examined in the presence of each other, Mr. James A. Bealmear and Mr.
186 J. Irving Bealmear having given their testimony in the presence of each other, as well as the other witnesses for complainant.

Mr. MILLAN: If my opinion is asked, it is that such a request is competent and proper at any stage. It was the privilege of defendant to have asked for the rule in case of complainant's witnesses, and he did not do so.

Mr. BARKSDALE: Under the circumstances I think that I shall not accede- to the request.

Q. Do you remember the order in which these gentlemen signed—who signed first? A. That particular I do not remember.

Q. Was there a table in this parlor? A. Yes.

Q. Did you find them sitting about the table when you went in? A. I do not remember just what positions they took in the room.

Q. Was the paper signed on that table? A. It was.

Q. Did you hear the paper read? A. I did not; the paper was not read previous to signature.

Q. You mean while you were there, of course? A. That is, in the

presence, of course, of Mr. Nichols, because Mr. Nichols preceded me by a very few minutes.

Q. Did you see the paper after it was signed? A. I left immediately after the signatures were affixed.

Q. And where was the paper when you left? A. That I do not remember.

187 Q. Was it on the table? A. I do not recall.

Q. Where were you in the room when the actual signing took place? A. I was standing in the room; just exactly where I do not remember.

Q. Where with reference to the table on which the signing took place? A. Perhaps two or three feet in front of it.

Q. Did Mr. Nichols sit at the table when he signed the paper? A. I believe he seated himself to sign it.

Q. How about Mr. Bealmear? A. That I do not recollect.

Q. And you have no recollection whatever of what was done with the paper after the signatures were affixed? A. I have not.

Q. Did you see anybody pick it up from the table? A. I did not.

Q. Now, do you recall, after Mr. Nichols seated himself at the table for the purpose of signing, whether there were others seated about that table? A. I believe Mr. Sholes.

Q. And Mr. Bealmear? A. That I do not remember. That is, of course—pardon me, you are, of course, asking positively on the seating of the gentlemen?

Q. Yes. Did you make any memoranda as to this occurrence at the time, or at any time? A. The question appears ridiculous—no.

Q. You are relying on your unaided memory? A. Absolutely.

Q. Have you gone over the circumstances, or rehearsed
188 them with any one, before going on the stand? A. Positively not.

Q. This statement you have given us today is the first time you have ever told anybody about those occurrences there—is that right? A. Of course.

Q. You hav-n't even told it to Mr. Nichols, or counsel in the case?

WITNESS: Has he any right to ask that question, Mr. Barksdale?
Mr. BARKSDALE: Oh yes; tell him what happened.

WITNESS: Counsel, of course, questioned my right to witness—my ability to testify, and I related to him some of the facts—or some of this—yes, some of the facts stated.

Q. Do you know Mr. William A. Joline, who is a defendant in this suit? A. Mr. who?

Q. William A. Joline—J-o-l-i-n-e? A. No.

Q. Never heard of him? A. No.

Q. I understood you to say that you are in no way connected with anybody connected with this suit? A. Absolutely not in any way.

Q. And you have no interest in it? A. Absolutely none.

Q. Do you recognize any gentleman now present in the room as having been present at the signing of these papers—besides Mr. Pohlig and Mr. Wright, I mean? A. Of course; Mr. Bealmear and Mr. Nichols.

189 Q. You recognize this gentleman here (indicating Mr. James A. Bealmear) as having been present on that occasion?

A. Yes sir.

Q. You don't remember that Mrs. Sterritt was there? A. I do not; no.

Q. How large a room is this parlor? A. I don't know.

Q. Well, give us your best idea? A. It is a medium sized room.

Q. Well, is it twenty feet square, or forty? A. I don't know.

Q. What is your idea of a medium sized room? A. A medium sized room.

Q. Well, would you call this room that we are now in a medium sized room? A. I would.

Q. Is that parlor about the size of this room? A. About.

Q. And what do you consider to be the dimensions of this room, about? A. I have no idea.

Q. Was there more than one entrance to the parlor? A. Yes.

Q. There are two entrances in all—is that right? A. Two entrances that I can think of right now.

Q. How did you happen to be in the hotel this day, at that hour of the day? A. I was a guest of the hotel, had nothing else in particular to occupy my mind, and felt it was my privilege to sit where I was at that time.

Q. Is this cosy corner in view of the stairway up which Mr. Bealmear and Mr. Sholes would have had to go to get to the parlor? A. It is; yes.

Q. I understood you to say you didn't see them when they came in? A. Really, if they did come up that stairway, they passed by me unnoticed.

Q. Well, that is what I wanted to ask you, if there was any other stairway they could have come up? A. Yes, there is another stairway by which they might have come up, which is also directly in view of this cosy corner.

Q. How long after you went in the parlor was it before the paper was signed? A. Possibly a few minutes.

Q. What do you mean by a few—two or three minutes? A. Well, no.

Q. How many, then? A. About ten.

Q. What were you doing the rest of the time you were in there? A. Nothing.

Q. Just standing around? A. Just standing around.

Q. What went on during the ten minutes before the paper was signed? A. I didn't state positively ten minutes.

Q. Well, whatever time it was, what went on during that time? A. Mr. Nichols asked Mr. Bealmear the questions heretofore referred to.

Q. That is all you recollect that took place? A. During the interval I was in there previous to the signing of the paper.

191 Q. You have already told me that you did nothing after the papers were signed—what did you see any of the others do after the papers were signed and before you left? A. I don't remember; I had no interest in the activities of any of the parties.

Q. And paid no particular attention to what they were doing—is that right? A. That is right of course, if you refer to the other parties as other than the gentlemen who were immediately interested in the signing of the paper, that is, Mr. Nichols and Mr. Sholes and Mr. Bealmear.

Q. I do not. What I wish to ask you is what those other parties last mentioned did before you left? A. That I also don't know.

Mr. MILLAN: I think that is all.

Mr. BARKSDALE: That is all.

JAMES A. ETTINGE.

Subscribed before me this 28th day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

192 Whereupon, CHARLES A. WRIGHT, a witness of competent age called on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BARKSDALE:

Q. What is your age and occupation, Mr. Wright? A. I am twenty-five the 28th of next August; occupation, pool room manager.

Q. Located at what place? A. 507 H Street, Northeast.

Q. Are you acquainted with Mr. Daniel H. Nichols? A. Yes sir.

Q. Did you ever see Mr. James A. Bealmear, who is in this room at the present time? A. Yes sir, I have seen him.

Q. When was the first time you ever saw Mr. Bealmear? A. The first time that I saw him he came in the hotel there and passed by me—I just got a glimpse of him, he was going out and I seen him going out.

Q. When was that? A. That was the latter part of last February.

Q. Do you recollect whether or not you saw him on or about the 2nd of March, at the Mount Vernon Hotel, when a certain paper was signed by him and Mr. Nichols? A. Yes sir.

Q. What were you doing there at that time? A. Working for Mr. Nichols at the hotel.

Q. What were you doing there on the 2nd of March when this contract was signed? A. I was working there.

193 Q. I mean at the particular time just before Mr. Bealmear and Mr. Nichols signed this contract? A. Why, there were four or five of the boys sitting up in the cosy corner talking about the inauguration—it was close on to inauguration, and Mr. Nichols passed by and said something about coming in to “see me sign my death warrant,” so my curiosity was aroused and I followed him in the parlor.

Q. Who was in the cosy corner with you at the time? A. There was Mr. Ettinge and probably four or five others—the others, I don't

just remember who they were—a few of the boys who were stopping there most likely.

Q. Did you see Mr. Nichols and Mr. Bealmear sign this contract there at that time, on the 2nd of March, 1909? A. Yes sir.

Q. I show you plaintiff's Exhibit No. 1, and ask you to examine the name Daniel H. Nichols there in two places, one just under the typewriting and the other just under the writing in pen and ink, and state whether or not you saw Mr. Nichols sign that on that day? (Handing said Exhibit to witness, who examined same). A. Yes sir, I seen him sign that, I seen Mr. Bealmear sign, and also Mr. Bose, or Sholes, or whatever——

Q. (Interrupting.) Now, examine the line just under the signature of Daniel H. Nichols in both of these places, and state whether or not you saw Mr. James A. Bealmear, who is sitting here in this room, attach a signature to that paper? A. Yes sir.

Q. State what signature or name Mr. Bealmear wrote there at that time? A. It was J-a-s.—abbreviated, and capital A.—
194 then Bealmear.

Q. State whether or not Mr. Bealmear signed the name J. I. Bealmear, or J. Irving Bealmear, to that paper? A. No sir.

Q. Well, did he or did he not? A. He didn't sign either one of them.

Q. Who was present in the room at the time the paper was signed? A. Well, there was Mr. Nichols, Mr. Bealmear, and Mr. Sholes, and Mr. Ettinge, Mr. Pohlig, myself, and some lady, I don't recollect who she was, sitting on the sofa.

Q. Did you hear any conversation between Mr. Nichols and Mr. Bealmear in the room on that day prior to the signatures being attached to the paper? A. Yes sir, I heard Mr. Nichols ask Mr. Bealmear something about could he get a guarantee of five years by paying the interest and taxes on some loan.

Q. What if anything did Mr. Bealmear reply to that? A. Mr. Bealmear said yes, he would give him a guarantee.

Q. What guarantee? A. For five years, by paying the interest and taxes on this loan, or whatever it was.

Q. Do you remember whether or not the amount of the monthly payments was mentioned? A. I think it was a hundred and some dollars—a hundred and ten dollars—something like that.

Mr. BARKSDALE: That is all.

Cross-examination.

By Mr. SMITH:

Q. What do you mean by interest on the loan? A. What do I mean by it?

195 Q. Yes? A. Just what I said.

Q. What did you say? Q. Why, he asked him if he would give him a guarantee for five years if he would pay the interest and taxes on this—whatever they were talking about, I don't know. That is all I heard.

Q. That is all you heard of the conversation? A. Of that conversation, yes.

Q. Did you ever hear of taxes being paid on a loan? A. I know nothing about that.

Q. How long did you work for Mr. Nichols? A. I worked for him from the 28th of February until about the 1st of April.

Q. How long did you know him before that? A. Quite a while.

Q. Where do you work now? A. 507 H Street, Northeast.

Q. Running a pool room, you say? A. Yes sir.

Q. What were you doing for Mr. Nichols? A. Just general utility man—looking out for the roomers, for inauguration.

Q. This lady—was she a gray haired lady? A. That I don't remember; I didn't see her hair, she had her hat on.

Q. You didn't see her hair? A. I could have seen it, but I don't remember now.

Q. Did she say anything? A. Not while I was there.

Q. How long were you there? A. Anywhere from ten to fifteen minutes.

Q. Was it ten or fifteen minutes after Mr. Nichols went
196 in before he signed the paper? A. Ten or fifteen minutes after he went in before he signed the paper—is that what you said? It was in that space of time the papers were signed.

Q. Didn't you say you were there ten or fifteen minutes? A. Ten or fifteen minutes, yes sir. In that space of time I was there the papers were signed. How long it was I don't know.

Q. How long did you stay after the papers were signed? A. I went directly out after the papers were signed.

Q. Where did you go? A. Downstairs in the office.

Q. How long have you known Mr. Sholes? A. I don't know Mr. Sholes only—I don't know him except to know him by sight. If I seen the man I would know him.

Q. What sort of a looking man is he, a tall man or a short man? A. Not so tall, not so short.

Q. Slim or stout? A. He ain't slim—he ain't stout.

Q. What sort of a looking man is he? A. What sort of a looking man?

Q. Yes? A. I wouldn't want to describe him.

Q. Clean shaven? A. Yes; got a mustache, think, I ain't sure.

Q. Wear glasses? A. I don't remember.

Q. Did he say anything while you were in the room? A. No sir.

Q. Did the lady say anything? A. No sir, not while I
197 was there.

Q. You were there fifteen minutes? A. About fifteen minutes, yes.

Q. Mr. Sholes didn't say anything, and the lady didn't say anything? A. No sir.

Q. Who did say anything? A. Mr. Nichols asked Mr. Bealmear the question above answered, and Mr. Bealmear said yes.

Q. That is all that was said in fifteen minutes? A. Yes sir.

Q. What else was done in the fifteen minutes? A. There was the signing of these papers.

Q. What do you mean by these papers? A. These papers here.

Q. Show me what you mean? A. You can see them, can't you—you are not blind.

Q. That paper marked Exhibit No. 1, is that the paper you refer to? A. Yes sir.

Q. Is that the only paper that was signed? A. No sir, there was another.

Q. What was that? A. It was the same as this.

Q. How do you know that? A. Because I seen it.

Q. Where did you see it? A. In the hotel where it was signed, in the parlor.

Q. Did you read it? A. No sir.

Q. How do you know it was like that? A. Because it was the same looking paper. I don't know whether it was the same
198 reading or not, I didn't read either one of them.

Q. Have you see it since? A. No—I have seen this one.

Q. Have you seen the other one? A. No sir.

Q. You say you hav-n't seen the other paper to which you refer since that time? A. Since what time?

Q. Since the time it was signed at the hotel? A. No sir, I hav-n't seen it since.

Q. Have you talked with Mr. Nichols about it? A. No sir.

Q. Have you been to the hotel since these papers were signed?
A. Yes sir.

Q. Where were these papers signed? A. They were signed in the parlor.

Q. Whereabouts in the parlor? A. In the parlor.

Q. Whereabouts in the parlor—what section of the parlor? A. That I wouldn't state. They were signed on the table; I don't know what portion.

Q. Who signed first? A. Mr. Nichols signed first.

Q. Where were you when that paper was signed? A. I was standing directly back of Mr. Nichols.

Q. And Mr. Nichols signed first? A. Yes sir.

Q. And then he stepped away, did he? A. No sir, he sat there.

Q. And who else was sitting there? A. Mr. Sholes and Mr. Bealmear.

199 Q. All seated? A. All seated—all who?

Q. Mr. Sholes and Mr. Nichols and Mr. Bealmear were all seated? A. Yes sir.

Q. Was this lady seated? A. Yes sir.

Q. All the other people there seated? A. No sir.

Q. Why do you recollect so distinctly how that paper was signed?
A. Why, because it is similar to my own name.

Q. Yours is James A. too? A. No sir, mine is Charles A.—I make an A just the same—a capital A.

Q. You recollect it because your name is Charles A.? A. Charles A., yes sir.

Q. Now, what was done with the paper after it was signed? A. That I don't know.

Q. How long did you stay there after it was signed? A. I left directly after it was signed.

Q. How long have you lived in Washington? A. Off and on for seven years.

Q. Seven years? A. Yes sir.

Q. Were you born here? A. No sir.

Q. Where were you born? A. Philadelphia, Pennsylvania.

Q. How long was it after Mr. Nichols went in the room 199½ before he signed the paper? A. It was in a space of about fifteen minutes. I was in there about fifteen minutes, and I remember seeing him sign in the room.

Q. I didn't ask you that question. (To the Examiner.) Read the question.

Whereupon the previous question was read to the witness.

A. That I couldn't state exactly, and I won't make any statement at all.

Q. I would like to have the best of your recollection about that?

A. The best of my recollection was in a space of fifteen minutes.

Q. Did he sign it as soon as he went in? A. No sir.

Q. You say you came out as soon as it was signed? A. Yes sir.

Q. Did the others come out at the same time you did? A. What others?

Q. Mr. Sholes, Mr. Bealmear and Mr. Nichols? A. No sir.

Q. You came out and left them in there? A. I came out and left them in there.

Q. Did anybody come out with you? A. Yes, Mr. Ettinge and Mr. Pohlig and I came out in the hall, and Ettinge and I—I got a cigarette off him and went downstairs in the office.

Q. What did you hear Mr. Bealmear tell Mr. Nichols about the taxes on this property? A. What he told him—he didn't tell him anything, he just answered yes, he would give him a five year guarantee, if Mr. Nichols would pay all the interest and taxes.

200 Q. That he would give him a five year guarantee? A. That is right.

Q. Did he say he would give it to him in writing? A. He said he would give it to him, but he didn't mention writing. After Mr. Nichols asked him, he just said yes.

Q. How large a table was that, Mr. Wright? A. That I don't know.

Q. As large a table as this one here? (Indicating.) A. No.

Q. Not as large as this? A. No sir.

Q. Was it a table about three feet in length? A. That I wouldn't specify—I wouldn't say, because I don't know exactly the size of it, and I wouldn't make any statement.

Q. When you went out where were the papers? A. Where were what papers?

Q. These two papers that were signed? A. They were laying on the table.

Q. What did Mr. Sholes say to Mr. Nichols in your presence?

A. Mr. Sholes didn't say anything to Mr. Nichols in my presence.

Q. Did he say anything to Mr. Bealmear? A. No sir.

Q. Who signed that paper in your presence—all the signatures that were put on there? A. Mr. Nichols signed it, Mr. Bealmear signed it, Mr. Sholes signed it. Then there was some writing in pen, and it was signed again by the same three.

201 Q. Let me see if I got that right; Mr. Nichols signed it?

A. Mr. Nichols signed it.

Q. And you saw him sign it? A. Yes sir.

Q. You stood right over him? A. Yes sir.

Q. Then it was handed to Mr. Bealmear and you saw him sign it? A. Yes sir.

Q. You saw him sign it James A. Bealmear? A. Yes sir.

Q. Then Mr. Sholes signed it? A. Yes sir.

Q. And those signatures are the signatures above the writing? A. Yes, that is above the writing. Then there was some writing, and then they signed it again.

Q. Took it around in the same way and signed it again. Was anything said about interest after the writing? A. Nothing was said in my presence outside of what I have said.

Q. Nobody said a word? A. Oh yes, what I have stated.

Q. Was that writing put on there in your presence—under the signatures, the writing? A. Yes sir.

Q. When was that put on there? A. When was it put on there?

Q. Yes? A. Why, right after the signing—after the first signing.

202 Q. And was anything said about the Tennessee Avenue houses? A. Not that I recollect now.

Q. Now, you have told us everything that was said about that paper, have you, by Mr. Nichols, Mr. Bealmear or Mr. Sholes? A. Yes sir, that I recollect; everything that I recollect.

Q. You say the writing was put on there after the first signatures to the paper? A. Yes sir.

Q. Do you know why it was put there? A. No sir.

Q. Any reason stated for it? A. That I don't know.

Q. What is the number of your pool room license, if you know? A. I don't know; I am just managing the place.

Q. In whose name is it? A. W. W. Ball.

Q. Are you related to Mr. Nichols in any way? A. No sir.

Q. Has Mr. Nichols any interest in this pool room? A. No sir.

Q. Did you ever testify on behalf of Mr. Nichols before? A. No sir.

Mr. SMITH: That is all.

Mr. BARKSDALE: That is all.

CHARLES A WRIGHT.

Subscribed before me this 26 day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

203 Whereupon AUGUST F. POHLIG, a witness of competent age called on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BARKSDALE:

Q. Mr. Pohlig, what is your age and occupation? A. Twenty-four; house painter by trade.

Q. Are you acquainted with Mr. Daniel H. Nichols? A. I am.

Q. Do you know Mr. James A. Bealmear who is at present in the room? A. Only by sight.

Q. When was the first time you ever saw Mr. Bealmear? A. The first time I ever saw Mr. Bealmear was when he entered the place that was previously used as a barber shop—that is on the first floor in the rear of the door. I was working there at the time on a stand that I was going to use for a lunch stand on inauguration day in front of the hotel. Mr. Bealmear and a lady entered the door, and I was hammering, and I stopped hammering. This lady spoke to Mr. Nichols, she says, “Mr. Nichols, let me introduce Mr. Bealmear, the owner of the property on Tennessee Avenue.

Q. How long was that prior to the 2nd of March, 1909? A. That was about a week or five or six days before the 4th of March—I wouldn’t say exactly what the length of time was.

Q. Do you know who that lady was? A. No sir, I do not.
204 I would know her if I would see her.

Q. When was the next time you saw Mr. Bealmear, if you saw him again? A. That was on the 2nd of March.

Q. What year? A. 1909.

Q. Where? A. In the parlor at the hotel.

Q. Did you see Mr. James A. Bealmear sign a paper there at that time? A. I did.

Q. How did you happen to see it? A. I was standing at the head of the steps talking to the housekeeper. Mr. Ettinge and Mr. Wright and several others—I don’t know who they were, guests of the hotel, were standing there at the cosy corner. Mr. Nichols says, “Come on and see me sign my death warrant.” Wright and Ettinge followed him, and I did too, from curiosity.

Q. Did you see Mr. Nichols and Mr. Bealmear sign a paper there at that time? A. Yes sir.

Q. Examine the paper I now show you, being plaintiff’s Exhibit No. 1, and observe the signature Daniel H. Nichols attached thereto in two places, and state whether or not you saw Mr. Nichols sign that paper at that time? (Handing said Exhibit to witness, who examined same.) A. I did.

Q. Observe the place after the signature—just under the name of Daniel H. Nichols, in two places on the paper, and state whether or not at the same time and place you saw James A. Bealmear attach a name or signature to the paper? A. I did.

205 Q. State what name that was? A. It was James A. Bealmear, with the James abbreviated J-a-s.

Q. What followed? A. A.—capital A., Bealmear.

Q. State whether or not Mr. Bealmear attached the name J. I. Bealmear, or J. Irving Bealmear, to that paper at that time? A. He did not.

Q. Do you recollect who else was in the room at the time that paper was signed? A. Why, Mr. Sholes was in there, and the lady was in there, the same lady who introduced Mr. Bealmear to Mr. Nichols in the barber shop three or four days before that. Mr. Wright and Mr. Ettinge, of course.

Q. Previous to the signature of Mr. Nichols being attached to that paper, did you hear any conversation between Mr. Nichols and Mr. Bealmear? A. Yes sir, I did.

Q. What was it? A. Well, as near as I can remember, it was Mr. Nichols asking Mr. Bealmear—I didn't only hear this in the parlor, but I heard this before when he was introduced to Mr. Nichols by this lady—Mr. Nichols asked if he could give him a guarantee for five years by only keeping up the interest and taxes on this property, for five years, and Mr. Bealmear says, "Yes, I can."

Q. Did Mr. Nichols mention the amount of the monthly payments, or not? A. I don't remember exactly, I wouldn't say, but it was somewhere around one hundred dollars.

Q. What did Mr. Bealmear say he would do?

206 Mr. SMITH: I object to the question because it is leading.

A. Mr. Bealmear said he would.

Q. He would do what? A. That he would guarantee it for five years—give him a guarantee for five years.

Mr. BARKSDALE: That is all.

Cross-examination.

By Mr. MILLAN:

Q. How long have you known Mr. Sholes? A. I don't know Mr. Sholes only by sight.

Q. What sort of looking man is he? A. Well, a medium sized man, dark complected, little mustache, I think.

Q. Where are you employed now? A. Employed nowhere at present; have no employment. I am a printer by trade, but there is no work going on now.

Q. Where do you live? A. 487 Pennsylvania Avenue.

Q. You board there in Mr. Nichols' hotel? A. Yes sir.

Q. How long have you lived there? A. Been there for about two years, I suppose.

Q. Do you board there whenever you are out of work? A. I board there when I am working and when I am out of work.

Q. How long has it been since you have worked? A. About three weeks.

Q. At this time that you first saw Mr. Bealmear, in the last week in February, you were working on a stand? A. I was building a stand in the rear of the office.

207 Q. Inside of the building? A. Yes sir.

Q. What kind of a stand was that? A. To sell hamburgers and frankfurters—a lunch stand.

Q. Did you stop your work when Mr. Bealmear and the lady came in? A. Yes sir.

Q. Where did the conversation between them and Mr. Nichols take place? A. In that room.

Q. How long were they there? A. That I wouldn't say for sure; I suppose about fifteen or twenty minutes, probably.

Q. What was it Mr. Bealmear was going to guarantee? A. That I don't know.

Q. The conversation as you recollect it was that Mr. Nichols asked him if he would give him a guarantee for five years, and he said he would? A. Yes sir, on this property on Tennessee Avenue, or the loan on the property with only the interest to pay. I think.

Q. Now, when they came back on the 2nd of March, what were you doing? A. I was there, a guest of the hotel.

Q. What were you doing at the precise time they came in? A. Standing right at the head of the steps, speaking to the housekeeper.

Q. Did you see them come in? A. See who come in?

Q. Mr. Bealmear and Mr. Sholes? I was there when Mr. Bealmear came in.

208 Q. Did you see Mr. Bealmear come in that day? A. No sir, I did not.

Q. Did you see Mr. Sholes come in? A. No sir.

Q. Did you see the lady come in? A. No sir.

Q. How long had you been at the head of the steps? A. I suppose five minutes, at the longest.

Q. Who did Mr. Nichols make this remark to, about signing his death warrant? A. No one in particular—there were several at the head of the steps.

Q. And you and Mr. Wright and Mr. Ettinge went in? A. Yes sir.

Q. Anybody else? A. No sir, I don't think there was any one else.

Q. How long were you in the room? A. That I wouldn't say.

Q. Give me your best recollection? A. Well, from twenty to thirty minutes, I suppose; twenty at the least, and maybe a little more than that.

Q. How long after you went in was it before the paper was signed? A. I suppose about five minutes.

Q. How many papers did you see signed? A. Four—two papers, four signatures.

Q. Whose were the four signatures? A. Well, I seen Mr. Sholes sign the papers—I mean the two papers; Mr. Bealmear signed twice; Mr. Nichols signed twice.

Q. Where were you when the signing was done? A. Standing inside the door in the rear of Mr. Nichols and in the rear of Charley Wright.

209 Q. Where was Mr. Ettinge? A. Just to the right of us, against the wall.

Q. What was going on during these five minutes after you went in, before the papers were signed? A. Mr. Nichols asked Mr. Beal-

meear a question similar to the one he has asked him downstairs four or five days prior to that, and he made the same——

Q. (Interrupting.) Never mind that—tell what he said? A. As near as I recollect it, he said would he guarantee this loan for five years with only the interest to pay on it.

Q. And what did Mr. Bealmear say? A. He said, "Yes."

Q. Did he say anything about taxes? A. I believe taxes were mentioned in there.

Q. Was that all that was said? A. I don't remember whether it was a hundred dollars or a hundred and ten dollars, or a hundred and fifteen dollars—the amount of interest.

Q. Was there anything else said during that five minutes? A. Not that I know of.

Q. After that five minutes, and during the remaining fifteen or twenty-five minutes that you stood there, what was said or done by the parties? A. The paper was first signed by Mr. Nichols, next by Mr. Bealmear, next by Mr. Sholes. Then there was a lot of talk—I didn't catch the words of it, and Mr. Sholes I think—I am pretty sure, wrote something on the papers. Then Mr.
210 Nichols signed again, Mr. Bealmear signed, and Mr. Sholes signed again.

Q. Did you hear the paper read? A. No sir.

Q. Was it read over while you were in there? A. No sir.

Q. What else was done during that fifteen or twenty-five minutes besides Mr. Sholes writing those five or six lines on the paper? A. As near as I can recollect, it was that time I went out, when the others did, just a little after the papers were signed.

Q. What position in the parlor did this table occupy? A. That I wouldn't say exactly. I suppose it was near the center.

Q. About how large a room is that parlor? A. That I don't know either; I wouldn't like to say the exact size. I suppose it is about eleven feet wide and not quite as deep as these rooms here.

Q. About how deep is the room—how many feet? A. That I wouldn't say.

Q. Are you able to estimate the width? A. Eleven feet, and I suppose twenty-five feet in length.

Q. What was done with the papers after they were signed? A. That I don't know. They were on the table when I went out of the room.

Q. Did Mr. Nichols see Mr. Bealmear sign them? A. Yes sir, I suppose so.

Q. Was he in a position to observe him sign? A. That I don't know.

211 Q. You know you saw it? A. I do.

Q. Where was Mr. Nichols when he signed? A. He had his back to me.

Q. Was he or not sitting at the table? A. Ye was; yes.

Q. Where was Mr. Bealmear when he signed? A. Just across from him.

Q. Was the paper taken away from the table after Mr. Nichols signed it and before Mr. Bealmear signed? A. No sir, it was not.

Q. Are you related to Mr. Nichols in any way? A. No sir.

Q. How long have you known him? A. I suppose about two years.

Q. Have you seen that other paper since it was signed there that day? A. No sir.

Q. Had you seen this one since, until today? A. Yes sir.

Q. Where did you see this? A. One day, here.

Q. I mean prior to today? A. Before today.

Q. Where did you see it? A. I seen it here, in this office—not in this room, but in that room. (Indicating).

Q. You saw this paper, Exhibit No. 1, in this office? A. Yes sir.

Q. When did you see it here? A. Yesterday.

Q. Did Mrs. Sterritt—this lady—when she introduced Mr. Bealmear, say anything to Mr. Nichols about his being from Baltimore? A. No sir, I don't think she did.

Q. Did you hear her make any reference to his firm, Bealmear & Son? A. No sir.

Q. What else was said there on that first occasion besides the fact of introduction and the matter of this guarantee that you have told us about? A. There was nothing else said in that room. They went in the hotel and stood at the desk, outside of the barber shop.

Q. Did you make any memoranda of what happened at that time? A. No sir, I did not.

Q. You were relying on your unaided memory? A. Yes sir.

Q. Have you rehearsed this with anyone? A. No sir.

Q. You hav-n't talked with Mr. Nichols, or Mr. Barksdale? A. Yes sir, I have.

Q. When did you talk with Mr. Nichols? A. Yesterday.

Q. Did you talk with him previous to yesterday? A. Not in regards to what I seen in the parlor.

Q. Do you remember anybody else who was present in the parlor when these papers were signed, whose names you have not given us?

A. Well, I suppose you have Mr. Sholes, Mr. Bealmear, Mr. Nichols and this lady, and Mr. Ettinge and myself. There were several in the cosy corner; I suppose they were guests; I don't know who they were.

Q. Do you mean that there were several others in the parlor? A. No sir, I do not.

Q. I believe you have named them all that were in the parlor? A. Yes sir; Mr. Nichols, Mr. Bealmear, Mr. Sholes and that lady, whatever her name is—I don't know—and Mr. Ettinge and Mr. Wright and myself.

Q. What impressed this matter so much on your mind? A. I don't know anything in particular that made such an impression, only it was a little curious the way Mr. Nichols put it—signing his death warrant.

Q. Your name isn't either James A. or Charles A.? A. No, but my first name is A, and I noticed that Mr. Bealmear used the same A I did in my name.

Q. So it was the A that attracted your attention? A. Yes sir—not the A alone, but the whole name.

Q. Now you are absolutely certain that when Mr. Bealmear signed these papers, each in two places, under the signature of Mr. Nichols, making four signatures in all, that he signed James A. Bealmear, abbreviating the James to J-a-s. each time? A. Yes sir.

Q. And you are as certain of that as of any other testimony that you have given here today? A. I am.

Q. If you are wrong about that, you are wrong about other things?

Mr. BARKSDALE: I object to that; it calls for a question of the witness' opinion that will not throw any light whatever upon
214 the issues here.

Q. If you are wrong about that, are you wrong about the other things that you have testified to? A. I don't see why I shouldn't be. If I am wrong about one I am wrong about all. I remember Mr. Bealmear signing his name as James A. Bealmear.

Q. Now, you are not referring when you make that answer, are you, to the places where Mr. Bealmear's name appears as a witness—over here under the name of Mr. Sholes? (Indicating.) A. No sir, I am not.

Q. You are referring to the places where he signed under the name of Mr. Nichols? A. Yes sir.

Mr. MILLAN: That is all.

Mr. BARKSDALE: That is all.

AUGUST F. POHLIG.

Subscribed before me this 28 day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

NOTE.—At this point an adjournment was taken, subject to notice.

P. H. MARSHALL,
Examiner in Chancery.

215

WASHINGTON, D. C., *March 5, 1910,*
Friday, at 2 o'clock p. m.

Met, pursuant to agreement of counsel, to continue the taking of testimony on behalf of defendants in above styled cause.

Present: Noel W. Barksdale, Esq., of counsel for Defendants; Messrs. Millan & Smith, attorneys for Plaintiff; also the Witnesses, and the Examiner.

Whereupon, DANIEL H. NICHOLS, defendant herein, and previously sworn as a witness for plaintiff, testified as follows:

Direct examination.

By Mr. BARKSDALE:

Q. Please state your name, Mr. Nichols? A. Daniel H. Nichols.

Q. You are one of the defendants in this cause? A. The only defendant I know of.

Q. And you have been sworn as a witness and testified on behalf of the plaintiff in this cause? A. Yes sir. I don't know in whose behalf I testified; I was sworn and testified in the case.

Q. Are you acquainted with Mr. James A. Bealmear, who is sitting here? A. Yes sir.

Q. By whom were you introduced to him, Mr. Nichols? A. By a woman by the name—I can't recollect her name, but she represented herself as being a real estate woman.

216 Q. Mrs. Sterrett? A. Mrs. Sterrett, yes. She introduced Mr. Bealmear as the owner of some property on Tennessee Avenue which he wished to exchange for my property. That was the first time I ever saw Mr. Bealmear.

Q. Was that Tennessee Avenue property she referred to the same property that is in litigation here? A. Yes sir.

Q. How long was that prior to the 2nd of March, 1909? A. About a week or ten days.

Q. What conversation did you have at that time with Mr. Bealmear, if any? A. I don't know as I can go over all the conversation.

Q. Well, what was the result of your conversation there on that day; did you or did you not agree to make an exchange of the property? A. No sir.

Q. State whether or not you saw Mr. Bealmear on the 2nd of March, 1909? A. Yes sir.

Q. Examine the paper I now hand you, the same being plaintiff's Exhibit No. 1, and state whether or not you signed the name Daniel H. Nichols on the 3rd page of the paper, in the two places where it occurs? (Handing Exhibit No. 1 to witness, who examined same). A. Yes sir.

Q. Did Mr. James A. Bealmear sign this paper at the same time? A. Yes, right after me each time.

Q. At what place on the paper did he sign? A. Right in here, where it has been scratched (indicating).

217 Q. Just under your name? A. Just under my name in each place.

Q. What name did Mr. James A. Bealmear sign there, Mr. Nichols? A. James A. Bealmear—capital A—large capital A.

Q. State whether or not you requested Mr. James A. Bealmear to witness your signature at that time? A. I did not; no sir.

Q. At the time that you signed it, and Mr. Bealmear signed it, or thereafter in your presence, was the name James A. Bealmear attached thereto in two places as a witness? A. No sir.

Q. Do you recollect any conversation that you had with Mr. James A. Bealmear just prior to the execution of this paper? A. Yes sir.

Q. State what that conversation was? A. It was the means of my signing the paper. I says, "Mr. Bealmear, can you guarantee me that I can have the money for five years by paying \$110 interest a month and taxes," and he said he could.

Q. To what were you referring, as to the \$110.? A. One hundred and ten dollars monthly interest on this twenty-two thousand. That is what he said it would be, about.

Q. Was that the monthly payments to the building association?

A. That was the monthly interest on the twenty-two thousand; that is what it amounted to, about.

Q. Was that the loan that was made by the building association on the Tennessee Avenue property? A. Yes, the interest on the encumbrance on the property.

Q. State whether or not you would have executed this
218 contract at that time but for the assurance on Mr. Bealmear's part, to you, that he would guarantee that that loan should stay there by the payment of \$110 per month interest?

Mr. MILLAN: I object to the question on the ground that this paper having been signed, speaks for itself, and previous negotiations are merged in the written contract, and upon the further ground that the reason stated or assumed by counsel in the question does not coincide with the reason attempted to be given by the witness, and the question is leading.

A. I would not have signed the contract had he not promised me that.

Q. What effect, if any, did his statement as you have related it have upon your signing the contract? A. I would not have signed it had he not have guaranteed me that five years.

Q. Why? A. Because I told him my age. My age was seventy—then I would be seventy-five, that was the reason. I wanted five years' peace without being bothered.

Q. What negotiations, Mr. Nichols, did you ever have with reference to this transaction with Mr. J. Irving Bealmear? A. I don't know of any conversation; the conversation was with Mr. Sholes, probably.

Q. Did you personally have any negotiations with Mr. J. Irving Bealmear about this transaction? A. Not the day it was signed, no sir.

Q. Did you have any conversation with Mr. J. Irving Bealmear, the son of Mr. James A. Bealmear, in connection with the execution of this contract? A. Never heard of him—not a word with him.

Q. Had you ever seen him? A. Never seen him.

219 Q. At the time this contract was executed, who did you think owned the Tennessee Avenue property?

Mr. MILLAN: I object to that as immaterial, and because the matter of the ownership was shown by the record, and for the further reason that it is immaterial in whose name the property stood, or what this witness thought about it, if a deed from the party who actually owned it was thereafter tendered him.

A. James A. Bealmear, as I was introduced to as the owner.

Q. What information, if any, did you have that J. Irving Bealmear owned or that he had any interest in it? A. I never had any information of that for months afterwards.

Q. Who was present, do you recollect, at the time that this contract was signed by you and Mr. James A. Bealmear? A. There were six or seven in the room, and there was as many outside the room in the hall. The folding doors was open, both of them.

Q. State whether or not you recollect that Mr. Wright, Mr. Pohlig and Mr. Ettinge were present—they are the gentlemen who have testified to this? A. Yes sir, they came in and witnessed my signature.

Q. Do you remember any circumstance that occurred there, as to why they came in? A. Yes, I felt a little sad about it, and I said, "Come in and see my sign my death warrant."

Q. When you said that, what did they do? A. They followed right on after me.

Q. Followed where? A. In the parlor.

Q. Is that where this contract was executed? A. Yes sir;
220 it is a room only about eleven by eighteen: about the center of the parlor it was.

Q. I notice that plaintiff's Exhibit No. 1 appears to have had some name erased from it there, just under your name in the two places. Do you know anything about how that occurred? A. I never knew anything about it—never heard anything about it until I seen it.

Q. State whether or not there was any change made in this contract after you and Mr. James A. Bealmear signed it, with your knowledge and consent? A. No sir.

Mr. BARKSDALE: That is all.

Cross-examination.

By Mr. MILLAN:

Q. Mr. Nichols, how long were you and Mr. Bealmear together on this day when the paper was signed? A. I don't think more than fifteen or twenty minutes.

Q. Did anybody come there with Mr. Bealmear that day? A. Mrs. Sterrett.

Q. Where were you when they arrived on the premises? A. Downstairs.

Q. Did you all go upstairs together? A. No.

Q. Who went up first? A. I can't tell you who went up first or last, but they went up in the parlor—Mr. Bealmear, Mr. Sholes and Mrs. Sterrett.

Q. Did Mr. Sholes come with Mr. Bealmear and Mrs. Sterrett? A. I don't think he did, but he might have done so.

Q. You are not certain about that? A. No sir.

Q. Did you find them in the parlor when you went up?
221 A. Mr. Sholes came down and I went up with Mr. Sholes.

Q. He came down after you? A. Yes.

Q. Then they must have gone up first? A. I went up with Mr. Sholes and signed the paper.

Q. What I want to get at is, who went upstairs first? A. I couldn't tell you whether they went up together, or separate, or how.

Q. But you have told me that when you went up into the parlor you found Mr. Bealmear and Mrs. Sterrett there—isn't that a fact? A. Yes sir.

Q. Did you see them when they arrived on the premises that day?

A. I guess I did; I am not positive about that.

Q. How many interviews had you had with reference to this transaction prior to this 2nd day of March, when the paper was signed?

A. Not more than two; I don't recollect but one, but there may have been two.

Q. Had you agreed upon the terms before the 2nd of March?

A. No sir.

Q. Where was this typewritten paper, Exhibit No. 1, that has been shown you today, when you first saw it? A. On the table in front of Mr. Bealmear. That is not the first time I saw it, no—Mr. Sholes brought it downstairs to me.

Q. On that day? A. On that day, the 2nd of March.

Q. Did you know where it was prepared, or who prepared it? A. No sir; there was no authority to prepare it either.

Q. When did you agree upon the terms of the trade? A. The 2nd of March.

Q. And did you agree upon them as they are in the paper? A. I agreed as I understood them to be in the paper.

Q. The paper which had been previously prepared? A. I suppose it had, because I never gave any authority to prepare it. We never agreed until the 2nd of March.

Q. It wasn't prepared that day? A. No sir.

Q. It was brought there by somebody already prepared? A. Yes sir.

Q. And you talked the matter over that day and agreed upon the paper as already prepared? A. Yes sir, as I understood it.

Q. When had you last seen Mr. Bealmear before the 2nd of March, when the paper was brought there? A. I think it was about a week or ten days previous to this.

Q. Was there any agreement or understanding at that interview that the paper would be prepared? A. No sir, not with me; not to my consent or knowledge.

Q. But when they brought it down, you agreed to it? A. When they brought it down and Mr. Sholes explained it to me I agreed to it and went up and signed it.

Q. Was this paper read to you before you signed it? A. Not at that time, no sir.

Q. Was it read to you at any time? A. Yes sir, Mr. Sholes read it to me.

Q. When? A. When he came downstairs.

Q. Before you signed it? A. Yes sir, he came downstairs and read it to me. I don't know as I read it myself, because I had a half a dozen people working for me.

Q. After you went upstairs with Mr. Sholes, how long were you in that parlor? A. I don't suppose more than fifteen or twenty minutes.

Q. What were you doing there all that time? A. When I first went up I asked Mr. Bealmear, I says, "You will give me a written—a guarantee that I can have this money for five years by paying \$110 a month interest on it and the taxes."

NOTE.—At the request of counsel the answer was read to the witness, who stated that he had not meant to say a written guarantee, although he had said it.

Q. Is that all that occurred during that twenty minutes? A. I don't know of anything else being said. I signed it then, and I wouldn't have signed it if it hadn't been for the promise of five years of peace.

Mr. MILLAN: I object to the statement of the witness beginning with, "I wouldn't have signed it——," and move to strike it out as not responsive to my question.

Q. Were you seated at a table when you signed the paper? A. Mr. Bealmear was seated, and I was seated when I signed my name.

Q. Who else was seated at the table? A. I couldn't tell you that. The table was a trifle longer than this is wide (indicating); say three feet long and eighteen inches wide, I guess.

Q. You would have had time to do a great deal more than to ask this question and get an answer in twenty minutes. Can you state what you were doing during the remainder of the
224 time? A. It took some time to sign it. I signed it and

Mr. Bealmear signed it, and then there was some writing done, and then Mr. Sholes signed it, and that is all I think that was done.

Q. You say there were six or seven people in the room? A. Yes sir.

Q. You don't remember the names, outside of those three, Mr. Ettinge, Mr. Pohlig and Mr. Wright? A. Didn't I tell you Mr. Bealmear was there, and Mr. Sholes and Mrs. Sterrett.

Q. And those whose names I mentioned? A. Yes sir.

Q. Do you remember anybody else? A. I didn't see anybody in the room. There were several outside in the hall.

Q. Where in the room were Mr. Ettinge and Mr. Pohlig and Mr. Wright when you signed the paper? A. Right in my rear.

Q. Were they standing or sitting? A. Standing.

Q. Where was Mrs. Sterrett when you signed the paper? A. That I couldn't tell you. She was in the room, that is all I can tell you.

Q. Where was Mr. Sholes? A. I couldn't tell you that either; he was in the room I know.

Q. Did you subsequently make any inquiry about this loan on the property? A. Make any inquiry?

Q. Yes? A. With reference to ascertaining whether I
225 could have it for five years?

Q. Yes sir? A. Yes sir.

Q. When did you make that inquiry? A. I guess it was about the middle of the month of March.

Q. Of whom did you inquire? A. Mr. Quinn and several different ones.

Q. Who is Mr. Quinn? A. A real estate dealer who collected my rents for me.

Q. Who else did you inquire of? A. J. R. Ringe.

Q. Who is he? A. Well, he is like a brother to me, I was raised with his father.

Q. That does not inform the Court who he is. Where does he live and what does he do? A. I have told you his name; that is all I can tell you.

Q. Where does he live? A. In Philadelphia.

Q. Did you make inquiry of him by letter? A. He came here to look out for my interest.

Q. What had he to do with this transaction? A. He ascertained the facts as well as he could.

Q. What had Mr. Quinn to do with it? A. He gave me the information I asked for.

Q. Did he hold the loan? A. No sir.

226 Q. Did you inquire of any others? A. Oh, yes, I inquired of two or three real estate men.

Q. Who were they? A. I can't recollect who they were.

Q. This first time that Mr. Bealmear and Mrs. Sterrett came, was Mr. Sholes with them? A. No sir.

Q. How many times was Mr. Sholes there when they were present? A. Only once I recollect of.

Q. Was that the 2nd of March? A. The 2nd of March, yes sir.

Q. When the paper was signed? A. Previous to the paper being signed.

Q. But the same date? A. The same date.

Q. Do you remember an occasion when Mr. Sholes and Mrs. Sterrett and yourself were present, prior to the 2nd day of March, when the terms of the transaction were agreed upon, and an understanding was arrived at between you and Mr. Bealmear, who prepared the papers? A. I don't think that ever Mr. Sholes met Mr. Bealmear at my place but the once; I don't recollect but once.

Q. Did Mr. Bealmear and Mrs. Sterrett come there on the 2nd day of March by previous appointment? A. They said they would be there some day, but they didn't say what day.

Q. How came Mr. Sholes to be there, then, on that day? A. I asked him to come and look out for my interests.

Q. But you didn't know what day they were coming? A. To see that the papers were properly prepared.

227 Q. You didn't know what day they were coming back?

A. I couldn't say. I knew that they were coming, and when they came I asked him to be there. Whether I sent around for him I don't recollect.

Q. Did you not know that they were to be there in connection with this matter? A. I have no recollection that they were to be there in connection with this matter.

Q. Do you say that there was not a meeting before that day, at which the terms of the transaction were agreed upon, you, Mr. Sholes, Mr. Bealmear and Mrs. Sterrett being present? A. No sir, not until the 2nd of March.

Q. No such meeting as I have indicated in my last question ever took place? A. No sir, not until the 2nd of March.

Q. And you didn't agree upon the terms of the transaction until the 2nd of March? A. Not until the 2nd of March; no sir.

Q. And you didn't know a paper was to be prepared until the 2nd of March? A. No sir, I didn't know it until then. I didn't know it was prepared until then. No arrangement was made until then, and I saw by the printed form that a trap was set for me, because I never made any bargain until the 2nd of March.

Q. What do you mean by the printed form? A. Why, it is a printed form. You can see that the contract is printed, isn't it?

Q. You are referring now to Exhibit No. 1? A. I say isn't it printed? That is what I refer to, right there—printed on the typewriter.

Q. When did you first communicate with Mr. Sholes about
228 the transaction, and call him in? A. I went and seen him at his house a few days, I think it was, after the first time Mr. Bealmear came there, and between that and the 2nd of March he offered me considerable property for exchange with the Four-and-a-half Street and the Avenue property.

Q. Now, on the 2nd day of March, how did you get Mr. Sholes there? A. I say I don't recollect whether I sent for him, or how he was there. I must have sent for him because I don't know how he was there otherwise.

Q. What did you have him there for? A. To look out and see if the papers were legal.

Q. You consulted him as an attorney in the matter? A. I wanted him to see if the papers were legal.

Q. You knew he was an attorney? A. I knew he was an attorney, yes sir.

Q. Had you previously consulted him in other matters? A. I had; yes sir.

Q. And you called him in and relied on his judgment in this matter? A. I did; yes sir.

Q. What you did you did under his direction and by his approval, I assume? A. Under his direction and advice; yes sir.

Q. When the paper was signed, was it signed in duplicate? A. Yes sir.

Q. What was done with these papers then? A. One was handed to Mr. Bealmear and one to me. I handed mine to Mr. Sholes, expecting him to search the title to these properties.

229 Q. And they were both taken away? A. Yes sir.

Q. When did you next see the papers, or either of them? A. I couldn't tell you the date, but it was sometime the first part of March.

Q. Where? A. At Mr. Sholes' office.

Q. What was the occasion of your seeing it then? A. I went there to see Mr. Sholes, and Mr. Sholes had been to see me and wanted to know if I was going to throw up the trade, and he asked me several times for me to sign the deed, and I told him I had until the 1st of March to sign the deed—the 1st of April, I mean. He says, "Shall I tell Mr. Bealmear the trade is off." "No," I says, "I have until the 1st of April."

Q. How many times did you see him in that connection? A. I don't think I seen him but once; I don't think I was there but once.

Q. Did he make these several requests all at one meeting? A. He came to see me; I didn't go to see him.

Q. He came to see you several times? A. Yes sir.

Q. About how often? A. Well, I guess he was there at least three times, anyway.

Q. And you saw him once? A. Yes sir.

Q. At his office? A. Yes sir.

230 Q. Did you confer about this matter on each of these occasions? A. No, no more than he asked me, he says, "Why don't you sign this deed?" I says, "I have got plenty of time, until the 1st of April," so he sayd, "You might just as well finish it up," and I says, "It seems to me there is a great hurry about it."

Q. Did you ask him about this loan and the interest on it? A. I may have asked him.

Q. Did you? A. I can't tell you whether I did or not.

Q. After the papers were taken away on the 2nd of March, where did you next see them? A. In Mr. Sholes' office.

Q. And about when was that? A. I couldn't tell you; somewhere about the first part of March—probably the middle of March.

Q. You were not there but once? A. I don't remember but once.

Q. Did you read the paper over then? A. No, Mr. Sholes had read it. I had no doubt about it until I ascertained that I couldn't have that guarantee. That was the ground I backed out on.

Q. No other ground? A. At that time there was no other ground, but since then I see it has been scratched.

Q. How does that affect you if you could get the property just the same?

Mr. BARKSDALE: I object to that because it calls upon the witness for an opinion, and there is a legal question involved in connection with it that the witness ought not to answer—a peculiar question of law.

231 A. Well, because I felt it was a trick—the whole thing was a trick of his, so I went to Philadelphia and got Mr. Ringe to come on and look out for my interest.

Q. A trick by whom? A. By Mr. Bealmear.

Q. Wasn't the paper in the hands of your attorney?

Mr. BARKSDALE: I object to the question for the reason that there is no testimony here to show who was his attorney at that time, and further, that the relationship must be shown by facts.

Q. Wasn't the paper in the hands of your attorney? A. He wasn't my attorney at that time; he has done no business for me after the 2nd of March.

Q. What were you doing at his office? A. I went there with reference to this inquiry.

Q. He took the papers away with him on the 2nd of March? A. Because I expected him to search the title of this property, and before he had come to that I found I had been tricked.

Q. When did you discover that the paper had been scratched? A. That I couldn't tell you, but I suppose about the middle of March; I am not sure.

Q. And how did you discover it? A. By my eyes; it was plain to be seen by the naked eyes.

Q. But you *hand't* seen the paper then? You hadn't seen the paper after it was taken away from your office and before the middle of March? A. Didn't I tell you I went to Mr. Sholes' office?

Q. Did you know it was scratched before you went to his office?

A. No sir.

232 Q. Did you look at it there and then discover it was scratched?

A. I can't say whether it was then or not.

Q. When did you next see the paper after this visit to the office of Mr. Sholes? A. In Mr. Barksdale's hands.

Q. When? A. I can't tell you that date either, but it was in Mr. Barksdale's hands.

Q. Was it before or after this suit was brought? A. That I can't tell you.

Q. Well, it was some time after the 1st of April, was it? A. That I can't tell you; I should judge it was, yes.

Q. So that according to your recollection, you saw the papers on the 2nd of March, and Mr. Sholes then took them away? A. Yes.

Q. And you saw it again in his office about the middle of March? A. I think so.

Q. And the next time you saw the——? A. Was in Mr. Barksdale's office.

Q. After the 1st of April? A. I think so.

Q. How did the papers get from Mr. Sholes to Mr. Barksdale's? A. I gave Mr. Barksdale an order for them.

Q. When did you do that? A. I guess it was somewhere about the last of March.

Q. You severed your relations with Mr. Sholes, then, about the last of March? A. No sir, the 2nd of March; I never employed him after the 2nd of March.

233 Q. Was the title to the property examined? A. I didn't get him to examine the title—I say I intended to.

Q. Why did you terminate your relations with Mr. Sholes?

MR. BARKSDALE: I object to the question because it is absolutely immaterial and irrelevant, and not responsive to anything brought out on the direct examination of this witness; and I give notice to counsel that they will be bound by this witness's answer.

A. At the advice of my friends in Philadelphia, that they would furnish me some one else that they knew of.

Q. When was it you got the advice of your friends in Philadelphia? A. About the middle of March.

Q. Was it before or after you made this visit to the office of Mr. Sholes? A. That I can't say.

Q. Did this Mr. Ringe, who came on from Philadelphia, examine the papers or contracts? A. I think he did, yes sir.

Q. Where? A. Here in Mr. Barksdale's office.

Q. He didn't examine them in the hands of Mr. Sholes? A. I don't think he did; I don't think he ever seen them in Mr. Sholes' hands.

Q. Now, I understood you to say that you became dissatisfied about the matter of this encumbrance on the property, and inquired into the question of whether you could let that remain for five years, and when you became convinced that you could not, you backed out—is that what you said? A. That was it; I felt that I had
234 been tricked; he didn't keep faith with me.

Q. But later, after you reached that conclusion, you discovered that the paper had been scratched? A. Yes sir.

Q. And you advance that as an additional reason why you should not be bound? A. I do.

Q. But you had made up your mind to throw up the transaction because of the condition of this trust; is that right? A. That I couldn't have this money for five years with only paying \$110 a month.

Q. That then, as I understand it, was the real reason? A. That was the first reason; yes sir.

Q. And later you discovered on your contract what you understood was a further legal objection—is that right? A. I see the paper had been defaced—altered.

Q. You say that you didn't know that James I. Bealmear held the title to this property until months afterward? A. I don't know when, but some time afterwards.

Q. You knew it when this suit was brought, didn't you? A. No sir, I didn't know know it then, because I had no papers, I left them in Mr. Barksdale's hands.

Q. You knew that James I. Bealmear brought this suit? A. No, I didn't see any of the papers. I left them in the hands of my attorney; I thought Mr. James A. Bealmear was the owner, he was the only man I had seen or had any dealings with.

Q. Do you remember to have received a letter from the firm of Millan & Smith in regard to this matter, calling upon you
235 to complete the transaction?

Mr. BARKSDALE: I object unless the time or date of the latter, or some designation is given——

Q. (Interrupting.) On or about April 1st? A. If I did I referred it to my attorney.

Q. Do you remember receiving the letter? A. I received a letter that I believe came from you folks.

Q. A registered letter? A. Registered letter; yes sir.

Q. Do you recollect that that letter was signed as attorneys for J. I. Bealmear? A. I do not; I turned it over to Mr. Barksdale.

Q. You don't recollect that fact? A. No sir, if I did it would be the first information I had of James I. Bealmear.

Q. What circumstance impressed it so strongly upon your mind

that the paper was signed James A. Bealmear? A. Because I seen him sign it.

Q. What name appeared in the body of the contract?

Mr. BARKSDALE: I object to that on the ground that the paper itself will show what name appeared in the body of the contract. A. It was J. Bealmear.

Q. You think the name in the body of the contract was J. Bealmear? A. J. Bealmear; yes sir.

Q. Look at the paper, Exhibit No. 1, which I now show you, and state if you are still of that opinion. (Handing Ex. No. 1 to witness, who examined same.) A. You mean there? (Indicating.) Yes sir, I don't believe that I was there.

Q. Did you look at the contract yourself? A. I looked at
236 it, yes sir.

Q. Did you read it? A. Mr. Sholes read it.

Q. You didn't read it? A. I don't know that I did, I may have read some part of it. I was firmly of the opinion that I was dealing with the old gentleman and nobody else.

Q. How did you know his name was James A. Bealmear? A. By seeing it. I didn't know it either—I didn't know but J. Bealmear.

Q. When was it you went to Philadelphia? A. That was about the middle of March, as near as I can recollect—the first time I went. I was there several times.

Q. I mean your first trip? A. I think it was the middle of March.

Q. When was it you reached the conclusion that you were not going to carry this transaction out? A. As soon as I ascertained that he could not give me a guarantee.

Q. When was that? A. Somewheres the first part of March.

Q. When you went to Philadelphia, did you see Mr. Joline? A. I stop with Mr. Joline whenever I go there.

Q. Did you say anything to Mr. Joline about this transaction? A. I don't know.

Q. You confessed a judgment in the Court here in favor of Mr. Joline, did you not, on the last day of March?

Mr. BARKSDALE: I object to that as not responsive to the
237 direct examination of this witness, and counsel will make this witness their own for the purposes of this investigation and interrogation.

Whereupon, at the request of counsel, the previous question was read to the witness.

A. I owed him the money.

Q. Well, you confessed a judgment? A. Yes sir.

Q. This judgment in favor of Mr. Joline was confessed on the 30th of March, upon a suit brought the day before, was it not?

Mr. BARKSDALE: I object; the record itself will show, and it is not responsive to the direct examination.

A. I can't tell you the date; I confessed judgment, yes sir, to Mr. Joline and to my brother.

Q. It was immediately after the suits were brought, was it not, that you confessed these judgments—or very soon? A. After the suit was brought? I think not.

Q. I mean to say their suits were brought. They sued you and you immediately confessed judgment, didn't you? A. Oh yes sir, yes sir.

Q. Had you agreed before hand that you would confess judgment?

Mr. BARKSDALE: I object for the reasons heretofore stated.

Q. Before they brought these suits, had you agreed with them that you would confess judgment? A. I don't remember any agreement.

Q. Did you talk with them about the matter at all? A. When I borrowed the money I talked about paying them.

238 Q. And then you talked with them before these suits were brought about the matter of confessing judgment? A. Not that I recollect of.

Q. Did you go up to the Court House and confess these judgments?

Mr. BARKSDALE: I want to object here to this entire line of cross-examination for the reasons heretofore given, that it is not proper cross-examination and not responsive to the direct examination, and my objection, without repetition, will apply to this entire line of cross-examination.

A. Certainly I confessed judgment in the Court House.

Q. At whose instance did you go there and do that? A. With the ones that I owed it to.

Q. Then you did talk the matter over with them? A. I went with them when they sued me.

Q. When they sued you you went with them to the Court House? A. I went with them to the Court House.

Q. They asked you to go? A. I can't tell, but I was willing to go.

Q. You were in perfect accord with them? A. To pay my debts—certainly.

Q. This debt of Mr. Joline was a very old debt, was it not? A. No sir, about a year old. My brother's was the oldest.

Q. Why hadn't your brother sued you before? A. That is up to him—I can't tell you.

Q. Did he tell you he was going to sue you this time? A. I can't tell whether he did or not. He is in my employ still.

Q. Do you know Mr. Charles T. Hendler, a member of
239 this Bar? A. By sight only.

Q. Did you have any negotiations with him with reference to these debts? A. Not that I recollect of.

Q. Was he with you when you confessed the judgments? A. That I can't recollect; possibly he was.

Q. Did Mr. Joline come down from Philadelphia to bring his suit? A. He entered suit there.

Q. Didn't he enter a suit here to? A. He probably did, but that was his business—I don't know all his business.

Q. What did you mean a while ago when you said you went to the Court House with the people you owed and confessed judgment?

A. There were two or three along; I don't know who they were.

Q. Was Mr. Joline there? A. Yes sir.

Q. Was your brother? A. Yes sir.

Q. Was Mr. Hendler? A. I don't know; I think so.

Q. How did you get together on that occasion? A. I don't know.

Q. You assembled somewhere for the purpose of going to the Court House? A. We went from the magistrate's office to the Court House.

Q. What magistrate do you refer to? A. Hendler I think is the name.

240 Q. You mean lawyer? A. I thought probably he was a magistrate.

Q. Who went with you to his office? A. I went by myself.

Q. Where did you meet your brother? A. I guess I met him there; I don't recollect that.

Q. Where does your brother live? A. He lives with me.

Q. Did he at the time this judgment was confessed? A. Yes sir, and he is still living with me.

Q. He works for you? A. Yes sir.

Q. Did he see the contract between you and Mr. Bealmear signed? A. I don't think he did.

Q. But he knew it had been signed? A. I don't know.

Q. Did you ever take his advice in regard to this transaction with Mr. Bealmear? A. Whose?

Q. Your brother's? A. I don't know that he has advised with me.

Q. When did he advise with you? A. I say I don't know that he has advised with me.

Q. Have you talked with him about it? A. That I couldn't say.

Q. How did it happen that these two suits, the one of your brother and the other by Mr. Joline, were brought on the same day, if you know? A. That I can't tell you.

Q. When did Mr. Joline sue you in Philadelphia?

Mr. BARKSDALE: I object to that; the record will show.

A. I can't recollect that date.

241 Q. About how long ago? A. I can't tell you, I say.

Q. Was it during the year 1909? A. I suppose it was, but I don't know.

Q. Had he sued you in Philadelphia before you went on there to get this advice of your friends? A. He had sued me before the suit was brought here.

Q. I am aware of that, because the suit here was brought on a Pennsylvania judgment. My question is, had he sued you before you went to Philadelphia to get advice about this transaction, as

you have told us? A. He sued me when I was there, but I can't tell you what time I was there.

Q. He sued you while you were there for the purpose of getting this advice? A. I don't know—when I was there one time. I was there several times to Philadelphia.

Q. In connection with this transaction? A. I was there several times. I don't know that every time was in connection with this transaction or not, because that was my home.

Q. Several times, do you mean, during the month of March, 1909? A. Yes sir.

Q. And it was on one of these occasions that Mr. Joline sued you? A. Yes sir.

Q. Did you confess judgment there? A. Yes sir.

Q. When did you first consult counsel here with reference to this transaction, other than Mr. Sholes? A. I can't tell you what date it was, but Mr. Barksdale can tell you that probably.

242 I can't recollect what date.

Q. Do you know about what time it was? A. I say I can't tell you what date, but it was sometime I think in March.

Q. Why were you so anxious for your brother and Mr. Joline to get these judgments against you quickly? A. I don't know that I was so anxious, but I wanted to pay my bills.

Q. Did the getting of judgments against you make you pay your bills any quicker? A. It protected my friends against sharks, as I thought.

Q. You could have paid these bills, if paying them was what you wanted, without any suits being brought, couldn't you? A. How do you know that I could? You must know more about my business than I do myself.

Q. If your object had been merely to pay the bill, the bringing of a suit was not necessary to enable you to do that, was it? A. I didn't have the money to pay them, and I couldn't do that without money.

Q. Did you have the money after the suits were brought and the judgments confessed. A. I have told you that if I had had the money I would have paid them.

Q. What do you mean by a "shark"? A. Mr. Bealmear; I look at him as a shark.

Q. So that in confessing these judgments, your object was to protect your friends against Mr. Bealmear? A. I didn't say so; if my actions say so, they speak for themselves.

Q. I think you have already told me that your object was to protect your friends against sharks? A. That is it.

Q. That was your object in confessing these judgments? A. That was one of the objects.

Q. And by "sharks", you mean Mr. Bealmear? A. Yes sir.

Q. How would it protect your friends? A. That he was trying to beat me out of my property, and give me something worthless for it.

Q. Did your friends know you wanted to protect them? A. That I couldn't tell you.

Q. Did you tell them you were willing to protect them? A. I don't think so.

Q. What did you say? A. I don't know that I said anything to them.

Q. But that was your object? A. My object was to protect my creditors.

Q. But you kept that object entirely to yourself, as I understand it? A. That I don't know, whether I did or not.

Q. When this contract, Exhibit No. 1, was signed on the 2nd of March, you are quite positive, as I understand it, that Mr. Ettinge, Mr. Pohlig and Mr. Wright, the three witnesses who have been produced here on your behalf, were present in the parlor of the Mount Vernon Hotel, and saw you and Mr. Bealmear sign? A. Yes sir.

Q. You are absolutely positive of that? A. Yes sir; I asked them in there.

Q. And Mr. Sholes, Mr. Bealmear and Mrs. Sterrett were present?

A. Yes sir.

244 Q. Anybody else that you recollect? A. Not that I recollect, besides myself. That is, inside; outside there were several.

Q. Who was it that you thought had set a trap for you? A. Mr. Bealmear.

Q. And what was the trap? A. Since I come to think of it, why did he come there with a contract already prepared when there was no contract made previous? What else could I think but that there was a trap set for me?

Q. When you speak of a trap, then, you mean to refer to the fact that the paper was brought there already prepared? A. Yes sir, without any contract previous.

Mr. MILLAN: That is all.

Redirect examination.

By Mr. BARKSDALE:

Q. Mr. Nichols, you were asked as to why you were clear about the signature that was attached by Mr. James A. Bealmear on this contract right under your name. State whether or not *that* your recollection is that he signed that James A. Bealmear, or J-a-s. A. Bealmear?

Mr. MILLAN: I object to that as leading.

A. It wasn't James in full, it was J-a-s.

Q. It was J-a-s.? A. Yes sir, and capital A.

Q. State whether or not you confessed judgment in Philadelphia in favor of Mr. Joline prior to the 2nd of March, or subsequent? A. Prior to the 2nd of March—oh, prior to the 2nd of March? No, it was sometime in March I was there.

Q. 1909? A. Yes.

245 Q. When did you learn the facts with reference to the change of this signature to Plaintiff's Exhibit No. 1? A. I

can't tell you the date, but I think it was in your hands when I first noticed the change. I am not positive about that.

Q. How long was it prior or subsequent to the 1st of April if you know? A. Well, I should judge the last part of March.

Q. What I want to know is about the actual facts. You told us that you observed that this contract had been altered in the matter of this signature. Now, when did you learn the actual facts and circumstances under which the alteration was made? A. As soon as I looked at it.

Q. No, I mean the facts concerning it. It has been testified here by Mr. Bealmear that he took it to Baltimore and had his son sign it, and then returned it to Mr. Sholes; when did you learn these facts? A. About a couple of months ago, I think.

Q. So while you knew the contract had been altered, you didn't know the facts and circumstances until a short time ago?

Mr. MILLAN: I object to that as leading.

A. Yes.

Q. What authority, if any, did you give Mr. Sholes to have this contract altered or changed?

Mr. MILLAN: I object to the question because it calls for a conclusion, and it is leading.

Q. After the 2nd of March, 1909, Mr. Nichols, was Mr. Sholes your attorney, or not? A. No, sir, not after the 2nd of March.

246 Q. State whether or not you ever employed Mr. Sholes in the capacity of attorney, or in any other capacity, after the 2nd of March? A. No way at all after the 2nd of March.

Q. What authority, if any, did he have from you to represent you in any matters after the 2nd of March? A. No authority whatever.

Q. Was it possible for that encumbrance to stay upon that property for five years' time by the payment of \$110 a month, or not? A. It would be compelled to, or it would be ruin to me.

Q. I mean, what did you ascertain as to that, whether or not it could be arranged that the loan should be placed there and kept there by payment of \$110 a month?

Mr. MILLAN: I object to the question on the ground that the record is the best evidence as to the condition of the trust, and upon the further ground that the witness has already stated on his cross-examination that the only information he had on the subject was acquired through inquiries made of parties in no way connected with the trust.

WITNESS: They ascertained from the insurance companies, though.

Mr. MILLAN: In view of the answer volunteered by the witness to my objection, I further object to any statement made by these parties as hearsay.

Q. In response to a question on cross-examination, Mr. Nichols, you stated that you had sought information on this subject through other parties whom you did not name. State whether or not you

investigated the matter with the Perpetual and Loan Association, who held the loan on that property?

247 Mr. MILLAN: You mean, Mr. Barksdale, whether the witness himself investigated it?

Mr. BARKSDALE: I am asking for information.

A. I found that I could have no guarantee.

Whereupon, at the request of counsel, the previous question was read to the witness.

A. Yes.

Q. And what position did the Perpetual Building and Loan Association take on that—that it could stay at that figure, or would be increased? A. That it could not be guaranteed.

Mr. BARKSDALE: That is all.

Recross-examination.

By Mr. MILLAN:

Q. Mr. Nichols, whom did you see at the Perpetual Building Association? A. That I can't tell you.

Q. Did you go up there yourself? A. Yes sir.

Q. Where did you go? A. I think it is on F Street.

Q. On F Street? A. I think so; I am not positive.

Q. Who went with you? A. I can't tell you—somebody.

Q. When did you go? A. Somewheres in March.

Q. Did you see Mr. Benjamin? A. I can't tell you who I seen—some official.

Q. Was it a man or a woman? A. A man.

248 Q. Was it Mr. Mitchell? A. I can't tell you.

Q. You are quite certain it was on F Street? A. Not positive, I said I thought so.

Q. Where on F Street? A. I can't tell you, but somewheres on F Street.

Q. East or West of 9th Street? A. West, I think.

Q. Which side of the street? A. I can't tell you now.

Q. You don't recollect who went with you? A. I can't recollect just now.

Q. Did anybody go with you? A. Didn't I tell you somebody went with me?

Q. Whenever Mr. Sholes asked you about this transaction during the month of March, you always told him you had until the 1st of April to sign the deed? A. Yes.

Q. You never did tell him that you had made up your mind to throw the thing up because you had been trapped? A. I told him it was ruinous to me.

Q. That was what you told him? A. Yes.

Q. When did you tell him that? A. I don't know—on one of the times.

Q. Did you tell him you were going to throw it up? A. He asked me if he should tell them that I was going to throw it up, and I said then, "I have got until the 1st of April".

Q. And that, I understand, is what you told him every time—that you had until the 1st of April? A. Not every time; no.

249 Mr. MILLAN: That is all.

DANIEL H. NICHOLS.

Subscribed before me this 26 day of March, 1910.

P. H. MARSHALL,
Examiner in Chancery.

Whereupon an adjournment was taken, subject to agreement of counsel.

P. H. MARSHALL,
Examiner in Chancery.

* * * * *

250

WASHINGTON, D. C.,
TUESDAY, March 22, 1910—3 o'clock p. m.

Met pursuant to agreement of counsel to continue the taking of testimony on behalf of the defendants in the above entitled cause.

Present on behalf of the defendants, Noel W. Barksdale, Esq.

Present on behalf of the plaintiffs, Messrs. Millan & Smith; also the Examiner and witnesses.

Mr. BARKSDALE: I now offer in evidence a certified copy of a judgment against James A. Bealmear from the Baltimore City Court, Maryland. This is a judgment against James A. Bealmear in favor of William I. Purman for \$22,460.

Mr. SMITH: We object to the admission of this transcript in the record because it is a copy of a judgment of a court of another jurisdiction and because it is not a judgment against the defendant in this case and is therefore no lien upon the property involved in this litigation in any wise, and because the judgment is open to the defense of the Statute of Limitations, the record showing that it was obtained September 9, 1884.

(And the same is accordingly filed herewith by the Examiner and marked Defendants' Exhibit No. 1.)

251 Mr. BARKSDALE: I now offer in evidence a certified copy of a judgment from the Superior Court of Baltimore City in favor of Louis R. Keizer, trading as Merrill & Keizer, for \$213.45.

Mr. SMITH: I object to the admission of this record in evidence for the reason that it shows a judgment against James A. Bealmear, who is not a party to this suit, and because it is a judgment of a court of another jurisdiction than the one in which the pending suit is brought and is therefore no lien upon any property in the District of Columbia, and because the record shows that the action was commenced on the 25th day of June 1890, and judgment entered on July 30, 1890, and hence is open to the defense of the Statute of Limitations.

(And the same is accordingly filed herewith by the Examiner and marked Defendants' Exhibit No. 2.)

Mr. BARKSDALE: I now offer in evidence a certified copy of the insolvent docket entries from the Court of Common Pleas for Balti-

more City, wherein James A. Bealmear was party, and wherein Charles Brandean was made preliminary trustee and Charles Brandean was made permanent trustee.

Mr. SMITH: I object to the admission of this record in evidence for the reason that it does not involve any of the parties to this suit and because it is immaterial, incompetent and irrelevant and has no bearing upon the issues involved herein.

(And the same is accordingly filed herewith by the Examiner and marked Defendants' Exhibit No. 3.)

252 Mr. BARKSDALE: I now offer in evidence short copy of a judgment in favor of Charles A. Wells, against James A. Bealmear, at law No. 31161 of the Supreme Court of the District of Columbia \$333.00.

Mr. SMITH: I object to the admission of this paper in evidence for the reason that it is incompetent, immaterial and irrelevant and because it is a judgment against James A. Bealmear who is not a party to this suit, and because it was obtained as far back as March 1st, 1893, and is therefore open to the successful plea of the statute of limitations.

(And the same is accordingly filed herewith by the Examiner and marked Defendants' Exhibit No. 4.)

Mr. BARKSDALE: I now offer in evidence short copy of a judgment against James A. Bealmear in the case of James A. Bealmear for the use of Charles L. Colner against E. Southard Parker, At Law No. 42,535, in the Supreme Court of the District of Columbia, for \$28.35.

Mr. SMITH: I object to this record because it is incompetent, immaterial and irrelevant and because it is a judgment for costs obtained against James A. Bealmear who is not a party to this suit, and therefore the judgment is no lien upon the property involved in the suit, and also because notwithstanding what the record shows, said judgment has been paid.

Mr. BARKSDALE: I object to that because it is not in evidence.

(And the same is accordingly filed herewith by the Examiner and marked Defendants' Exhibit No. 5.)

Mr. BARKSDALE: The defendant here announces his case closed.

P. H. MARSHALL,
Examiner in Chancery.

253

DEFENDANTS' EXHIBIT No. 1.

In the Baltimore City Court. January Term, 1910.

WILLIAM I. PURMAN

vs.

JAMES A. BEALMEAR, Garnishee of GEORGE H. LEWIS.

Action commenced on the 23rd day of May, 1910.

Attachment on Warrant debt \$22,460.00. Attached as per schedule A & B and notice given to James A. Bealmear, occupant in possession of the property attached described in schedule A as second

lot & agent in possession of the property described in schedule A, as first lot the same being unoccupied and notice given to Nathan De Bise, occupant in possession of the property described in schedule B. Also laid in the hands of James A. Bealmear on the 23rd day of M'ch 1884 at 4.40 O'clock P. M. in presence of George W. Roseman and Garnishee Summoned. Sept. 9th 1884 Judgment Con Nisi.

Plaintiff's Costs, \$34.60 Defendants' Costs, \$—.

STATE OF MARYLAND,
Baltimore City, sct.:

I hereby certify that I am the keeper of the Records of the afore-said Court, and that the foregoing is a true and full copy of the docket entries in the above entitled cause, taken from the
254 Record of Proceedings of the Baltimore City Court.

In testimony whereof, I hereto set my hand and affix the seal of the said Court this 11th day of March 1910.

[SEAL.]

GEORGE CAREY LINDSAY,
Clerk of the Baltimore City Court.

255 DEFENDANTS' EXHIBIT No. 2.

In the Superior Court of Baltimore City, May Term, 1890.

LEWIS R. KEIZER, Trading as Murrill & Keizer,

vs.

JAMES A. BEALMEAR.

Action commenced 25th day of June 1890.

Mem. Nar. Prom. Note Protest Account & Aff't f'd copy Nar. sent (201.31).

"Summoned & copy of Nar. & Notice to Plea left with Defendant."

15th July 1890 App. under the act.

30th July 1890 Motion in writing for Judgment by default f'd.

Same day Judgment by default for want of plea & affidavit of defence.

30th July 1890 Judgment by default extended for \$213.45 damages assessed by the Court & costs of suit. Order of Court f'd. Judgment inde.

30th July 1890 Fi. Fa. issued to September R. D. (No. 35) "Nulla bona.

Plaintiff's Costs, \$9.65.

Defendant's Costs, \$.30.

STATE OF MARYLAND,
Baltimore City, sct.:

I hereby certify, that I am the keeper of the Records of the Superior Court and that the foregoing is a true copy of the
256 Docket entries and short copy of the Judgment in the above entitled cause, taken from the Record of Proceedings of the

Superior Court of Baltimore City. And I hereby further certify, that said Record contains no entry nor proceeding to show that the Judgment aforesaid has been satisfied, either in whole or in part.

In testimony whereof, I hereto set my hand and affix the seal of the said Court, this 11th day of March A. D. 1910.

[SEAL.] STEPHEN C. LITTLE,
Clerk of the Superior Court of Baltimore City.

257

DEFENDANTS' EXHIBIT No. 3.

In the Court of Common Pleas of Baltimore City, January Term,
1910.

JAMES A. BEALMEAR

vs.

CHARLES BRANDEAN, Preliminary Trustee; CHARLES BRANDEAN,
Permanent Trustee.

April 27, 1883 Petition, Schedule, Trustee's Bond and Deed f'd.
May 7/1883 Meeting of the Creditors and selection of the Per-
manent Trustee Charles Brandean.

May 10/1883 Permanent Trustee's Bond f'd.

July 10/1884 Order of Court f'd.

Plaintiff's Costs, \$—. Defendant's Costs, \$—.

STATE OF MARYLAND,
Baltimore City, sct.:

I hereby certify, that I am the custodian of the records of the aforesaid court and that the foregoing is a true copy of the Insolvent Docket Entries in the above Entitled Cause, taken from the Record of Proceedings of the Court of Common Pleas of Baltimore City.

In testimony whereof, I hereto set my hand and affix the seal of the said Court this 11th day of March 1910.

[SEAL.] ADAM DEUPERT,
Clerk of the Court of Common Pleas of Baltimore City.

258

DEFENDANTS' EXHIBIT No. 4.

Short Copy.

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 31161.

CHARLES A. WELLS, Plaintiff,
vs.

JAMES A. BEALMEAR, Defendant.

1893, March 1. Judgment for pl'ff for..... \$300.00
 With interest Mar. 22, 1890.....
 Cost of Protest..... 2.15
 Costs of Suit..... 30.45
 " add'l to Satisfy..... .40
 Less credit, of \$— paid.....
 1—, — —. Fi. Fa., issued.
 —, — —. " " returned.
 \$— of said costs due Clerk.

Test:

[SEAL.]

J. R. YOUNG, *Clerk*,
By H. BINGHAM, *Ass't Clerk*.

March 21, 1910.

259

DEFENDANT'S EXHIBIT No. 5.

Short Copy.

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 42535.

JAMES A. BEALMEAR to Use of Chas. L. Skinner, Plaintiff,
vs.

E. SOUTHARD PARKER, Defendant.

1901, Apr. 20. Judgment vs. pl'f- for..... costs
 With interest.....
 Cost of Protest.....
 Costs of Suit..... \$27.95
 " add'l to Satisfy..... .40
 Less credit, of \$— paid.
 1—, — —. Fi. Fa., issued.
 —, — —. " " returned.
 \$— of said costs due Clerk.

Test:

[SEAL.]

J. R. YOUNG, *Clerk*,
By H. BINGHAM, *Ass't Clerk*.

March 21, 1910.

17—2206A

Testimony in Rebuttal.

Filed Mar. 29, 1910.

* * * * *

WASHINGTON, D. C.,
TUESDAY, *March* 22, 1910—3:30 o'clock p. m.

Met pursuant to agreement of Counsel to take testimony in rebuttal on behalf of the plaintiff.

Whereupon, LUCY V. STERRETT, a witness of lawful age having been previously sworn on behalf of the plaintiff, was recalled and testified as follows:

By Mr. SMITH:

Q. You have already been sworn in this case? A. Yes.

Q. Mrs. Sterrett, you recall your testimony and the facts with regard to the signing of the contract between Mr. Bealmear and Mr. Nichols on March 2nd? A. Yes.

Q. You were present on that occasion? A. Yes.

Q. Who else was present?

Mr. BARKSDALE: I object. That question was asked this witness when she was on the stand before.

A. Mr. Bealmear, Mr. Sholes, Mr. Nichols and myself.
260½ Q. Did you four have any prior meeting when this trade was discussed; if so, when?

Mr. BARKSDALE: I object because it is improper rebuttal testimony, and if relevant at all, is relevant in chief only.

Mr. SMITH: This question is asked to rebut Mr. Nichols' testimony that there wasn't a meeting of Mr. Sholes, Mr. Bealmear, Mrs. Sterrett and himself at which the terms of this transaction were agreed upon prior to the second day of March.

A. Well, it was on a Monday, and I think that was the first day of March, as I remember.

Q. On Monday, and I think that was the first day of March, as I remember. Where was that? A. That was right back of the main office; they used to use that as a barber shop, he told me, I do not know what they called it at that time. It was right back of the main office.

Q. Do you mean it was at the Mt. Vernon Hotel? A. Yes. What I mean by the main office is, the front door—you go in the front door and you go beyond back where the clerk is. We went back a little.

Q. Do you remember what time of day it was? A. No. I remember it was sometime from two to four, but I cannot tell you exactly the hour. As I say, I am always so busy, it is hard to remember every little detail.

Q. Did you four discuss the terms of this trade on that occasion?

A. I do not understand the question.

261 Q. Did you four discuss the terms of the proposed trade on that occasion? A. Yes.

Q. What, if anything, was agreed with regard to the preparation of the paper? A. That Mr. Bealmear would get the papers ready that night and they would meet again the following day. They agreed verbally just what they would do and get up contract according to the verbal agreement and close up the following day.

Q. Mrs. Sterrett, who introduced Mr. James A. Bealmear to Mr. Nichols—I believe you said on your direct examination,— A. I introduced him to Mr. Nichols.

Q. Do you remember what you said in making that introduction? A. That this was Mr. Bealmear of whom I had told him, of the firm of James A. Bealmear and Son of Baltimore, of whom I had previously told him.

Q. Did you tell him which Mr. Bealmear this was? A. I told him it was Mr. James A. Bealmear.

Q. Now, Mrs. Sterrett, I direct your attention to the time when the contract, plaintiff's exhibit No. 1, was signed. You testified, I believe, that you were present when this contract was signed. I will now ask you if Mr. James A. Ettinge was present?

Mr. BARKSDALE: I object to that because this witness was interrogated thoroughly with reference to the parties who were present when she was on the stand before, and this is not proper rebuttal testimony.

262

A. No, sir.

Q. Was Mr. Charles A. Wright present? A. No.

Q. Was August F. Pohlig present? A. No.

Q. Do you know either of these men? A. Don't know any of those men by their names; I might maybe have seen their faces around in the lower part of the hotel.

Q. You are positive, are you, that none of those were present? A. I am positive that no one was present but us four, not even a shadow of any human being.

Cross-examination.

By Mr. BARKSDALE:

Q. Did you ever see Mr. Ettinge? A. There was one young man's face I would remember if you bring him in here, I would remember.

Mr. SMITH: I move to strike that out.

A. (Continuing.) I don't know, but there was one certain young man who used to hang around the hotel, if you bring him here I could tell his face. I do not know anybody by that name. I might know his face. I do not know that man by his name. I might know him if you bring him present to me.

Q. Do you know Charles A. Wright? A. Not by his name; don't know as I know him by his face. I know there was one young

man, I became familiar with his face because I talked with
263 him and met him on the street car a few days ago and talked
with him, but I don't know his name.

Q. Do you know August F. Pohlig? A. By his name—one of those men might be the same man I remembered the face; I only remember one face around there.

Q. What day of the month was it you met there for negotiations? A. What day of the month was it? Do you mean to get this order arranged so as to have the contract written?

Q. Yes. A. That was, as I remember it, the first day of March—you mean this present contract?

Q. Yes. A. Somewhere from two to four.

Q. When was the next time you met? A. Next day.

Q. Where? A. In—I don't know whether you call it a parlor or sitting room; it is on the second floor. I know the window faces out on a street, Pennsylvania Avenue.

Q. When was it you introduced Mr. James A. Bealmer to Mr. Nichols? A. Oh, I introduced him to Mr. Nichols possibly a week or ten days before Mr. Sholes met us there on the first day of March.

Q. What time did you meet the day the contract was signed? A. Well, I don't remember just what time it was, but I feel sure it was in the afternoon, because they hurried over to the Title
264 Company, I think, and it was getting so late and I know I wanted Mr. Sholes to get something straightened out for me and they were in such a hurry, they wanted to go over to the Title Company.

Q. How long were you there the day the contract was signed? A. I do not remember, but it seemed to me two hours; it seemed an awful long time to me.

Q. What time did you leave? A. It was getting late; Mr. Bealmeear wanted to get his train to Baltimore.

Q. What time did you leave? A. I do not know exactly the minute. I know it must have been getting towards four o'clock; it might have been a little afterward.

Q. What time did you meet there? A. I do not remember exactly; it seems to me it was somewhere along about two to three; I would not like to say.

Q. Are you guessing, or not? A. I know it was in the afternoon.

Q. Is that a guess? A. It is no guess; it was not in the forenoon; it must have been in the afternoon.

Q. Are you sure about it being in the afternoon? A. Yes.

Q. Are you sure it was not about noon? A. Don't think so. I mean it was not about noon.

Q. How did you introduce Mr. Bealmeear to Mr. Nichols? A. I introduced him as Mr. James A. Bealmeear of the firm of James A.
Bealmeear and Sons, of Baltimore, of whom I had first told
265 him when I first went there to introduce him.

Q. Did you say anything about Mr. Bealmeear being the owner of this property on Tennessee Avenue? A. I told him Mr. Bealmeear's son operated a real estate office in Baltimore, that they did business together, that they as a rule did business together, were connected together.

Q. Did you tell Mr. Nichols who owned the Tennessee Avenue property? A. I told him it was owned by James A. Bealmear & Son of Baltimore, because there was nothing done but what father and son were together, they co-operated together in everything; that is what Mr. Bealmear told me; I remember distinctly his telling me that.

Q. What did you tell, when you introduced Mr. Bealmear to Mr. Nichols?

Mr. SMITH: I object because this has been thoroughly gone into on cross-examination. The question has already been answered.

A. I cannot remember the exact words—I can give you the substance, though. I cannot remember one day to the next exactly word for word, but I can give the substance most any time.

Q. Where were the negotiations had for this property? A. You mean the first negotiations when Mr. Sholes was present?

Q. Yes. A. Was right back of the main office on the first floor.

Q. Who was present at that time? A. So far as I remember, Mr. Sholes, Mr. Bealmear, Mr. Nichols and myself.

Q. Well, do you remember—— A. I don't remember anyone else. That is all I remember.

L. V. STERRETT.

Subscribed before me this 28 day of March 1910.

P. H. MARSHALL,
Examiner in Chancery.

267 Whereupon, WILLIAM H. SHOLES, a witness of lawful age, having been previously sworn, was recalled and testified as follows:

By Mr. SMITH:

Q. Mr. Sholes, you have testified that you were present when the paper which I now show you, plaintiff's exhibit No. one, was signed. A. I did so testify.

Q. Will you state whether Mr. James A. Ettinge was present?

Mr. BARKSDALE: I object for the same reason that this witness has already been over the question as to who was present at the time of execution of this contract, and it is not proper testimony for rebuttal.

A. I don't know any one of that name.

Q. Do you know Mr. Charles A. Wright? A. I do not.

Q. August F. Pohlig? A. I do not.

Q. Who were present in the room when this paper was signed?

Mr. BARKSDALE: I object, because if relevant at all it is relevant in chief only, and it has already been gone over and it is not proper rebuttal testimony.

A. So far as I now remember, there were present, Mr. Nichols, Mr. Bealmear, Mrs. Sterrett and myself.

Q. Can you say whether anyone other than Mr. Bealmear, Mr.

Sholes, yourself, or Mrs. Sterrett stood directly behind Mr. Nichols when he signed that paper, or by Mr. Bealmear when he signed it so that the signature of either one or the other could be seen? A. I did not see anyone standing in the position you mention.

Q. If anyone had been there, you would have seen them, wouldn't you?

Mr. BARKSDALE: I object to that because it calls for an opinion of the witness, unless the witness absolutely knows.

A. I think I would have seen them if they had been there.

Q. Have you any doubt about it?

Mr. BARKSDALE: I object. Of course the witness would not testify about anything if he had a doubt about it.

A. Well, you put the question about standing close.

Q. I will put it to you this way. James A. Ettinge, Mr. Pohlig and Mr. Wright testified that they were present when Mr. Bealmear signed that paper, that they stood immediately over him and saw him write the name Jas. A. Bealmear. What I want to know is, was either of these men present?

Mr. BARKSDALE: I object to that question because it purports to state that the witness has said they stood over Mr. Bealmear when the record does not show any such testimony.

A. As I stated before, Mr. Smith, I did not see them there and had they been in the room I believe that I would have been conscious of their presence.

Q. Mr. Sholes, do you recollect whether you, Mr. Bealmear, Mr. Nichols and Mrs. Sterrett had an interview about the transaction which is the subject of this suit, prior to March second?

269 A. I saw Mr. Bealmear about the matter prior to March second and I saw Mrs. Sterrett prior to March second, for March second is the day this contract was signed. I remember very distinctly about seeing both Mr. Bealmear and Mrs. Sterrett a day or two before that.

Q. Do you recollect whether Mr. Nichols was present? A. I am not positive about that.

Q. Did you see Mr. Nichols in connection with it any time before March second, 1909? A. In connection with it—do you mean—

Q. With this transaction. A. In reference to the trade of the houses?

Q. Yes. A. I did.

Q. Who was with him, if anyone? A. My recollection now is that Mr. Nichols and his brother came to my house one evening shortly before March second, and first told me about a proposition from Mr. Bealmear to trade the hotel property for some houses and vacant ground owned by Mr. Bealmear, and I remember quite distinctly of going over some figures and demonstrating to Mr. Nichols that to take the vacant ground as part of the exchange would be very greatly to his disadvantage. It comes to me now that this

original subject embraced a piece of property that Mr. Nichols owned on Four and a Half Street.

Q. Did Mr. Nichols sever his relations with you on March the second?

Mr. BARKSDALE: I object because that question was asked this witness on direct examination and that matter was very thoroughly gone over by cross-examination of your own witness on that particular point.

Mr. SMITH: This is to rebut Mr. Nichols' statement that he severed his relations with Mr. Sholes on March 2nd.

Mr. BARKSDALE: Mr. Sholes likewise testified to the same thing before.

A. Nothing was said on that date in reference to the severance of relations, but as a matter of fact I do not now recall that I did any more professional work for Mr. Nichols after that date.

Q. Did you enter into any conspiracy with Mr. Bealmear against Mr. Nichols in connection with this transaction? A. Most assuredly not.

Q. Do you know what this brother was named? A. I do not know what his—never heard his first name that I know of; simply knew of him as Mr. Nichols' brother.

Q. Has Mr. Nichols more than one brother? A. I cannot answer that; this is a brother I have known for a long time and he stays there at the hotel.

Cross-examination.

By Mr. BARKSDALE:

Q. When Mr. Nichols and his brother came to your house to see you it was not about this particular contract was it, or about the exchange of these two particular pieces of ground? A. Not this contract. It embraced a larger and a different scheme from this.

Q. With whom did you have your conversation at that time in reference to this transaction, the transaction of which you have just spoken. A. With Daniel Nichols.

Q. Are you acquainted with Mr. Ettinge, Wright and Po-lig, of whom you were asked on your direct examination? A. I am not. Don't know them, never met them and would not know them if I saw them.

Redirect examination.

By Mr. SMITH:

Q. Was Mr. Nichols' brother present when you and Daniel Nichols were talking about the transactions to which you have referred? A. At my house that evening?

Q. Yes, sir. A. My recollection is that he was.

Q. The transaction you have referred to embraced the property which is the basis of this suit, did it not? A. Yes.

Q. But also included some other property? A. Yes.

Recross-examination.

By Mr. BARKSDALE:

Q. You advised Mr. Nichols not to carry through the proposition he had under advisement at your house that afternoon, didn't you?
A. I did.

Q. It was not carried through? A. And it was decided not to carry it through.

Witness excused.

W. H. SHOLES.

Subscribed to before me this — day of — 1910.

P. H. MARSHALL,
Examiner in Chancery.

272 Whereupon, JAMES A. BEALMEAR, a witness having been previously sworn, was recalled and testified as follows:

By Mr. SMITH:

Q. Mr. Bealmear, do you know Mr. James A. Ettinge? A. No, sir.

Q. You saw him when he testified in this case, did you not? A. Yes, sir.

Q. Did you ever see him before? A. Not to my knowledge.

Q. Was he present when the contract, plaintiff's exhibit No. 1, was signed? A. No, sir.

Q. Was he in the room? A. No, sir; nowhere in sight.

Mr. BARKSDALE: I object to this line of testimony on the ground that this witness was thoroughly interrogated about the parties who were present when he was upon the stand before, and this is not proper rebuttal testimony.

Q. Do you know Mr. Charles A. Wright? A. No, sir.

Q. You saw him when he testified in this case, did you not? A. I did.

Q. Did you ever see him before? A. Not to my knowledge.

Q. Was he present in the room or in sight when contract, plaintiff's exhibit No. 1 was signed?

273 Mr. BARKSDALE: I object on the ground that this witness was interrogated about that particular matter when he was on the stand before, and it is not proper rebuttal testimony.

A. He was not.

Q. Did you know Mr. August F. Pohlig? A. No, sir.

Q. You saw him when he testified in this case, didn't you? A. Yes, sir.

Q. Was he present in the room or in sight when plaintiff's exhibit No. 1, was signed?

Mr. BARKSDALE: I object for the reason that this witness was asked about the parties who were present when he was on the stand before, and this is not proper rebuttal testimony.

A. He was not.

Q. I believe you testified, Mr. Bealmear, that the parties present were Mr. Sholes, Mr. Nichols, Mrs. Sterrett and yourself? A. Yes, sir.

Q. Was there anyone else in the room during the negotiations or the signing of this contract? A. Not one soul else the whole time.

Q. Mr. Bealmear, did you see Mr. Nichols on March first, the day before this contract was signed? A. Yes, sir.

Q. Who was with him?

Mr. BARKSDALE: I object for the reason that this matter has already been gone over before by this witness, in chief and it
274 is not proper rebuttal testimony.

A. Mr. Sholes, Mrs. Sterrett, Mr. Nichols and myself.

Q. Where was that meeting? A. That was on the first floor just back of the office.

Q. Were the terms of this trade arranged then? A. It was. I was authorized to draw up the agreements and bring them over the next day and meet at the same time.

Q. Who authorized you to do that, Mr. Bealmear? A. Mr. Nichols.

Q. Mr. Bealmear, when did you first meet Mr. Nichols?

Mr. BARKSDALE: I object for the same reason as heretofore given.

A. Nearly a week, I guess, before this contract was signed.

Q. Did anyone introduce you to him, if so, who? A. Mrs. Sterrett.

Q. Do you remember how that introduction was framed? A. She introduced me as Mr. James A. Bealmear of the firm of James A. Bealmear and Son, responsible real-estate firm of Baltimore City, or something of that kind.

Q. Who were present on that occasion? A. At the first introduction?

Q. Yes, sir. A. No, one, but Mr. Nichols, Mrs. Sterrett and myself.

Q. Neither Pohlig, or Ettinge or Wright was present? A. No, sir.

Q. Mr. Pohlig testifies that the first time he saw you was in the place used as a barber shop on the first floor in the rear door,
275 that he was working on the lunch stand in front of the hotel, that you entered the door with a lady, that the lady spoke to Mr. Nichols, saying, "Mr. Nichols, let me introduce Mr. Bealmear, the owner of the property on Tennessee Avenue." Let me ask you, if at any time, any lady introduced you to Mr. Nichols as the owner of the property on Tennessee Avenue? A. No, sir.

Q. Was Mr. Pohlig present when you first met Mr. Nichols? A. No, sir,

Q. Or at any other time when you were introduced by a lady to Mr. Nichols? A. No, sir.

Q. Mr. Bealmear, Mr. Nichols testifies that he asked you, in effect, if you would guarantee the loan on the Tennessee Avenue property

could run for five years, by payment of interest and taxes, which amount to about \$110 a month. Did you make such guarantee? A. I never did, and if it had been made it would be contained in the contract as everything else agreed to was put in it.

Q. Mr. Pohlig, Mr. Wright, Mr. Ettinge and Mr. Nichols testified that on March second, upstairs in the parlor where plaintiff's exhibit No. 1 was signed, Mr. Nichols asked you in effect for this guarantee and you promised to give it to him. Did you ask him such a question and did you make him such a promise? A. He never asked such a question and I made him no such promise. He asked

how long this trust had to run, I stated it was held by the
276 Perpetual Building Association and at the time that I got it, they assured me upon the payment of the interest promptly, that the principal could run, that it was a Perpetual Association and they generally kept their money invested for the interest.

Q. What rent do the properties on Tennessee Avenue bring?

Mr. BARKSDALE: I object to that as not proper rebuttal testimony; it is part of your case in chief and this witness testified as to its value when he was on the stand before.

A. \$22.50 per month each.

Q. How much are the taxes now, on the ten houses, Mr. Bealmear?

Mr. BARKSDALE: I object for the same reason.

A. About \$225.00, I think.

Q. Per year? A. Per year.

Q. Mr. Bealmear, Mr. Nichols testified in effect that the terms or the trade had not been agreed upon prior to March 2nd, and had not been agreed upon before you brought the finished paper to him on that date for his signature. What have you to say on that subject? A. The terms were fully agreed upon on the afternoon of March 1st. Every particle of our agreement was understood between us, and I was authorized to draw the contracts up and to meet at the same time, which was between two and three o'clock on March second. I brought the contracts over, they were read over by

Mr. Sholes and Mr. Nichols, and the only matter that Mr.
277 Nichols asked—spoke as if he would like to have some change made, was in the terms of the lease, but it was agreed between us to let the agreement for the lease stand as it was already in the contract, and they were signed.

Cross-examination.

By Mr. BARKSDALE:

Q. You have testified that the taxes were \$225.00 a year. Do you know what this property is assessed at? A. I do not exactly, now. I know it is assessed low.

Q. Can you tell is how much? A. I could not.

Q. What is your impression?

Mr. SMITH: I object to his impression.

A. I think somewhere between fifteen and twenty thousand dollars.

Q. Where did you meet the first day when you had your negotiations, the day before this contract was signed? A. On the first floor just back of the office.

Q. Is that a room there or is it a large office? A. Large office.

Q. Who was present in that office at the time? A. No one but Mr. Nichols, Mr. Sholes, Mrs. Sterrett and myself.

Q. You are sure there was Mr. Nichols present? A. I am positive.

Q. Who was present on the second day of March when this contract was executed? A. Mrs. Sterrett, Mr. Sholes, Mr. Nichols and myself.

Q. Anybody else? A. Not another soul.

278 Q. You are positive of that? A. I am positive of it.

Q. Are you any more positive of that now than you were when you testified before in this case? A. I *was* positive of it now.

Q. You were just as positive then as you are now? A. Yes, sir.

Q. Then why was it you answered this question as follows when you were on the stand and you were asked who was present at that time; you said, Mrs. Sterrett, Mr. Sholes; and in response to the question "Who else?" "I don't think anyone else was there." Now why did you say you did not think, if you were positive you knew no one else was there? A. I do not know. But I know there was no one else. As a real estate dealer of forty years it is not customary in making transactions to have outside parties hanging around——

Q. Now that is not in answer to my question. I want to know why it was you did not say positively before, no one else was there? A. I do not know. But I am positive there wasn't anyone else present but just us four.

Q. How long were you there? A. About, I should judge, two hours.

Q. What time did you go there? A. Went there some—near, I think, 2:30 in the afternoon.

279 Q. What time did you leave there? A. Left there just about half past four. I know that I had to rush to catch the five o'clock train.

Q. Now didn't you testify before that you went there about three o'clock and did not leave there until five? A. I do not think that I did.

Q. Well, if you did, is your testimony today right? A. Well, if I did testify I did not leave there until five, it is wrong, because I left on the five o'clock train.

Q. For Baltimore? A. Yes, sir.

Q. How long would it take you to get from Mr. Nichols' place to the train? A. Well, it is not over, I think, about twenty or twenty-five minutes.

Q. You had expected to stop on your way that day to transact some business, hadn't you? A. No. We left the papers at the Title Company and I went out and jumped on a car and went right down to the depot and just got there in time to get on the train before it left.

Q. Did Mr. Sholes accompany you to the Title Company? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Now, don't you know that Mr. Sholes did not go with you to the Title Company's Office, but that he left you and came into the Columbian Building without going to the Title Company's office with you? A. No, sir. Mr. Sholes went into the Title Company's office with me.

280 Q. Can you give us the exact words Mrs. Sterrett used when she introduced you to Mr. Nichols? A. Well, I do not know that I could give all, entirely, the exact words, but I know that she introduced me as Mr. James A. Bealmear of the firm of James A. Bealmear & Sons, real estate—a firm of Baltimore, a very responsible or reliable firm—something of that kind.

Q. Mr. Sholes, at page 76 of the record says he don't think he went to the Title Company, but he thinks he went to his office. Does that change your impression about the matter? A. Not at all. I am positive of Mr. Sholes going with me and requested the gentleman who took the papers to examine the title to get through with it as soon as he could and he said "Let's put it through". This \$2500. trust Mr. Sholes was anxious should be paid off on Mr. Nichols' property.

Q. Then you differ with your witness about the transaction? A. I certainly do.

Mr. SMITH: I object to the language of Counsel for the defendant. This witness is a witness for the plaintiff in this case, and the witness himself is not the plaintiff. Mr. Barksdale has attempted to make it appear all the way through that this witness was the plaintiff in the case.

Witness excused.

JAS. A. BEALMEAR.

Subscribed before me this 28th day of March 1910.

P. H. MARSHALL,
Examiner in Chancery.

Mr. SMITH: That closes our case.

Mr. BARKSDALE: That closes my case.

281

Decree.

Filed Jun- 10, 1910.

* * * * *

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is this 10th day of June, A. D., 1910, adjudged, ordered and decreed as follows, viz: That the defendant Daniel H. Nichols be and he hereby is required to convey to the plaintiff J. Irving Bealmear by good and sufficient deed in fee simple, executed, acknowledged and delivered, ac-

according to law, a good and marketable title to the real estate described in the bill of complaint herein as follows, part of original lot five (5) in square 491 in the city of Washington, District of Columbia, described as follows, beginning for the same on Pennsylvania Avenue at a point distant 28 feet and one-fourth of an inch northwesterly from the south-east corner of said lot and running thence northwesterly on said Avenue 27 feet two and three-quarter inches to the south-west corner of said lot, thence northeasterly on the dividing line between said lot five and original lot six (6) in said square one hundred and thirty-two feet four and a quarter inches to an alley in the rear of said lot five, thence southeasterly on said rear line to a point that would be intersected by a line drawn at right angles to said Avenue from the point of beginning, and thence southwest-

282 erly from said point in a straight line to the place of beginning, subject to the deed of trust securing the sum of fifteen thousand dollars and the second deed of trust securing an indebtedness of twenty-five hundred dollars, referred to and described in the original bill herein, but otherwise clear of all liens, and to execute the lease hereinafter referred to, within thirty days from the date of this decree, upon the tender to him by the plaintiff of a deed executed and acknowledged according to law conveying to the said defendant a good and marketable title in fee simple to the land and premises described as and being lots numbered 18 to 27, both inclusive, of J. Irving Bealmear's sub-division of square north of square 1053 in the city of Washington, District of Columbia, subject to the deed of trust securing the sum of twenty-two thousand dollars, referred to and described in the original bill herein, which said deed shall provide for the assumption by the said defendant of the said indebtedness of twenty-two thousand dollars, but otherwise free from all liens, and a lease of the lands and premises hereinbefore decreed to be conveyed by the said defendant to the plaintiff for the remainder of the term of two years, computing from the first day of April A. D., 1909, reserving rent at the rate of two thousand five hundred dollars per annum, payable in monthly instalments of two hundred and eight dollars and thirty-three cents (\$208.33) on the first day of each month in advance, said lease to contain a proviso that if the lessor shall desire possession of the leased premises at any time during the term he may obtain the same at the expiration of

283 sixty days' notice served on the lessee, said defendant, in writing, and paying for such surrender the sum of one thousand dollars in cash, if the monthly rentals have been promptly paid and the premises have not already been vacated by the said lessee, and a further provision that the lessee, said defendant, may, by giving sixty days' notice in writing to the lessor, said plaintiff, vacate at the end of said sixty days and surrender the said premises to the owner of the same but without any compensation to himself for so vacating, and provided said rent has been paid up to the time of surrendering the possession of the said premises.

It is further adjudged, ordered and decreed that the judgments referred to in the original bill herein in cases at law number 51,517, Frank O. Nichols vs. Daniel H. Nichols, and at law number 51,518,

William A. Joline vs. Daniel H. Nichols in the Supreme Court of the District of Columbia, are, as liens against the property herein before decreed to be conveyed to the plaintiff and his right and title thereto, absolutely void and of no effect, and that the conveyance to him herein before provided for shall be free and clear of any and all liens of said judgments or either of them and the said property fully discharged and freed therefrom.

And it appearing to the Court that the plaintiff and the defendant Daniel H. Nichols, have been since the date of said contract each in possession of the property to be conveyed by him, and that they are entitled to an accounting each against the other on account of the subject matter of said contract, and that they have
 284 by written stipulations filed in the cause adjusted said accounts and ascertained the amount due thereunder from said defendant to the plaintiff; it is further adjudged, ordered and decreed that the plaintiff recover of the defendant Daniel H. Nichols, the sum of nineteen hundred and sixty-eight dollars and thirty cents (\$1968.30), the amount found to be due the plaintiff by the accounting aforesaid, besides the cost of this suit for which the plaintiff shall have execution against the defendant, Daniel H. Nichols as at law; and it is further adjudged, ordered and decreed that the plaintiff have a lien for five hundred and thirty-five dollars and eighty-three cents of the aforesaid amount of nineteen hundred and sixty-eight dollars and thirty cents on the aforesaid property to be conveyed by him to said defendant, Daniel H. Nichols when the same shall have been so conveyed, ahead of any lien of the aforesaid judgments at law.

THOS. H. ANDERSON, *Justice*.

The defendants Daniel H. Nichols, Frank O. Nichols, and William A. Joline in open Court this tenth day of June 1910 pray an appeal from the foregoing decree from this Court to the Court of Appeals of the District of Columbia, and said appeal is hereby allowed, and the bond for costs is hereby fixed at one hundred dollars, but in order to supersede this decree a supersedeas bond of Ten Thousand (\$10,000.00) Dollars shall be given.

THOS. H. ANDERSON, *Justice*.

285

Memorandum.

July 5, 1910.—Appeal bond filed.

Directions to Clerk for Preparation of Transcript of Record.

Filed Jul- 29, 1910.

* * * * *

The Clerk of the Court in preparing the transcript of record for the Court of Appeals in the above entitled cause will include the following papers:

1. Bill of Complaint, omitting exhibit.
2. The Demurrers of Defendants.
3. Order overruling Demurrers.
4. Answers of Defendants.
5. Replications.
6. Testimony and exhibits.
7. Final decree.
8. Memo.—Appeal bond.
9. This designation.

WILSON & BARKSDALE,
Attorneys for Defendants.

286 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 285 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 28477 in Equity, wherein J. Irving Bealmear is Complainant and Daniel H. Nichols, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the City of Washington, in said District, this 11th day of August, 1910.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By ALF G. BUHRMAN, *Ass't Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 2206. Daniel H. Nichols et al., appellants, vs. J. Irving Bealmear. Court of Appeals, District of Columbia. Filed Aug. 13, 1910. Henry W. Hodges, clerk.